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ABSTRACT

This 1976 Bicentennial Yearbook shows how the values expressed in the Declaration of Independence have been applied in specific episodes of U.S. history and provides current teaching strategies for values education. In the first and major part of the book, ideas about values associated with the birth of the nation are explored and traced as generations of Americans attempted to apply the values of "real life" circumstances. Four case studies examine how the values of life, liberty, and the pursuit of happiness were expressed in conflict situations in U.S. history. The first case study explores the meaning of "life" as applied to the impressment of American sailors by foreign powers. The second case study examines the meaning of "liberty" in the challenge of Susan B. Anthony to gain equal political rights for women. The third case study also examines the meaning of "liberty" in the struggle of the Mormons to be free from an oppressive government. The fourth case study details the meaning of the "pursuit of happiness" as illustrated in the collision between individualistic and societal interpretations of the antitrust movement against the Standard Oil Company about 1900. In a natural sequel to the historical treatment of Part I, Part II of the yearbook addresses instruction about values in a contemporary setting. It is concerned with the issues of values education and provides practical teaching suggestions. Included are philosophical definitions, questioning strategies, role-playing activities, and classroom techniques for analyzing value-conflicting dilemmas. (Author/DE)

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The Bicentennial Yearbook

Values of the American Heritage: Challenges, Case Studies, and Teaching Strategies

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Carl Ubbelohde and Jack R. Fraenkel, Editors

46th Yearbook 1976
NATIONAL COUNCIL FOR THE SOCIAL STUDIES

The Bicentennial Yearbook

Values of the American Heritage: Challenges, Case Studies, and Teaching Strategies

Carl Ubbelohde and Jack R. Fraenkel
Editors

46th Yearbook 1976

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Foreword

The Bicentennial Year should be especially exciting for social studies education. The constant reminders of our nation's origin on the mass media, even the disturbingly blatant commercialism, should help to generate student interest in American history. Even more important, the Bicentennial provides the opportunity to get at the heart of the citizenship education that is, supposedly, the central thrust of social studies education.

Clearly, or so it seems to me, citizenship in a democratic society must involve confronting the basic ethical issues of the society and determining what action to take on those issues. The political events of two hundred years ago, as our nation was founded, centered on the fundamental ethical question whether we should declare independence from England, by force if necessary, and by what justification. The Declaration of Independence is a statement of that decision, justifying the rebellion that followed.

The values stated in that document—which are the focus of the first part of this yearbook—and those later stated in the Constitution and its Bill of Rights, were not lightly arrived at. That they were not statements of petty commitments or expressions of only transient concerns seems evident. In fact, it is for me a matter of great awe that a group of men could set forth statements of basic principles that would serve so well as a structure for political-ethical decision-making in our society over a two-hundred-year period. (Whom of our current crop of politicians would you nominate for such a job in 1976?)

The principles have been redefined—continuously, in fact—and emphases have shifted as the society has redressed and then re-redressed the balances between the basic values—for example, between freedom and equality—in trying to achieve the elusive ideal of human dignity. And new values have emerged, such as the right to education. But the viability of the values originally articulated in the Declaration of Independence, the Constitution and the Bill of Rights is wondrous to me, a tribute to the intelligence and depth of insight of the Founding Fathers. Those basic values still provide an emotive and intellectual context for discussion and policy-making and for action, as well as the emotive

cement that holds the society together. The case studies of Part I of this yearbook attest to that viability.

But the basic values will not be automatically recognized and applied by everyone in the society. Helping students learn to do that is an important function of schooling, especially the social studies program. In a "natural" sequel to the historical treatment of Part I, Part II of the yearbook is addressed to instruction about values in the contemporary setting. It is an excellent mixture of concern with the issues of values education and practical teaching suggestions.

When it was proposed to the NCSS Publications Board, actually rather late in terms of the time needed to prepare a major publication, that it might be particularly appropriate for the Bicentennial Yearbook to focus on the values that were at the center of the Revolution and the formation of the new government, and that are still central to our society today, the response was enthusiastic and energetic. A yearbook on skills was delayed a year, and the efforts for this yearbook launched. The Publications Board's receptiveness to a change in plans is appreciated.

Each yearbook has a coordinator, or coordinators, who tend to go unsung. This yearbook exists in large part because of the special efforts of Celeste Woodley and her co-coordinator, Barry Beyer. The yearbook, which I believe is one of NCSS's finest, also owes much to the diligence, perseverance, and imagination of the co-editors, Carl Ubbelohde and Jack Fraenkel. And, of course, it would not exist without the authors, whose contributions are interesting as well as significant. From the National Council for the Social Studies, a big "thanks" to those mentioned above, and to the hard-working staff in the NCSS central office, who made this fine volume possible.

JAMES P. SHAVER, *President*
National Council for the Social Studies

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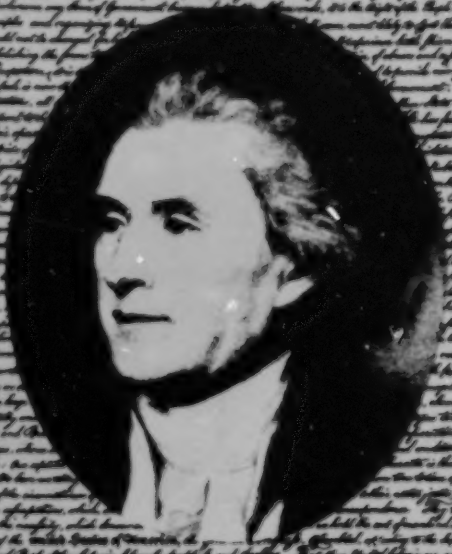
IN CONGRESS. JULY 4. 1776.

The unanimous Declaration of the [illegible] States of America.



PART ONE

To Secure These Rights: The Promises of the Declaration of Independence

We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness—That to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed. . . .

Introduction

It is an appropriate enterprise in the Bicentennial year for those whose professional responsibilities include instruction about American society to explore the concepts and assumptions of the Revolutionary generation and to trace the record of those concepts and assumptions as generations of Americans attempted to apply them in "real life" circumstances. That is the purpose of Part One of this Yearbook.

That purpose may be more fully understood if, at the beginning, an explanation of what this part of the Yearbook *is not* is directly stated. Part One is not directed to a description of or discussion concerning techniques for teaching about the promises and practices associated with the values of the American Revolution. Implications for teaching are the province of Part Two of this Yearbook.

Nor are the four essays that comprise Part One intended to be comprehensive descriptions or analyses of the ideas, concepts, assumptions, and values of the Revolutionary generation. Imaginative and talented craftsmen of history have explored that subject; for example, Bernard Bailyn in *The Ideological Origins of the American Revolution* and Gordon Wood in *The Creation of the American Republic, 1776-1787*. Through such studies in the history of ideas, we have become aware of the role of concepts, assumptions, attitudes, and values in the Age of the American Revolution. Part One of this Yearbook is not intended to restate the larger works of those scholars.

What is intended is a selective, illustrative examination of what happened to concepts and ideas and values associated with the birth of the nation during the years that followed the American Revolution. The field of inquiry was arbitrarily, but not unrealistically, narrowed to an examination of values associated with the recognized "promises" of that era, as they were identified in the most famous and influential rhetoric of the age—the Declaration of Independence. The self-evident, inalienable rights—life, liberty, and the pursuit of happiness—these form the categories of values and

concepts to be examined in the context of an episode in the history of the American people when there was stress or conflict centering in the value.

The essays that follow, then, are case *studies*, each in its own way providing an illustrative example of how the values of the Revolutionary era fared in the real, concrete world when interests, interpretations, needs, and desires competed for acceptance in public policy or policy application. Each chapter explains a *critical moment* when conflicting opinions concerning the concept or value were generated.

Life, liberty, and the pursuit of happiness, each subject to varying interpretations in the eighteenth century (and accumulating many additional connotations in the two centuries that followed), are seen within the structural matrix of public law and policy. If those words and phrases were to have any precise meaning, if they were to be objectives of society and not merely sterile, inoperative abstractions, then one would expect to see constitutions, charters, statutes, and court decisions providing direct explications of their meaning to real people living in a real world.

And so it was. From the bare, unadorned language of the Declaration of Independence, constitution drafters, legislators, administrators, and jurists set down laws and their interpretations to give those terms concrete experiential substance. The Constitution of 1787, and the Bill of Rights, along with the new state constitutions, and statutes of legislatures and of Congress, provide explications of and, for us, commentary as well, on definitions and applications of the ideology that generated the "Spirit of '76."

Against these beginnings, the authors submitted to exploratory analysis the state of the value in application at a later moment in the national experience when particular difficulty or conflict arose over events or attitudes related to that value. In turn, the authors will lead you from

(1) "life," and the questions surrounding its meaning as a right in an age when "manstealing" by foreign powers disturbed American concepts of governmental responsibility for security and the national image, to

(2) "liberty," first, in an affirmative sense of political participation, and Susan B. Anthony's challenge to conventional wisdom that insisted that women were not endowed by their Creator with the same inalienable rights as men, and then

(3) "liberty," in the negative sense—the right to be free from

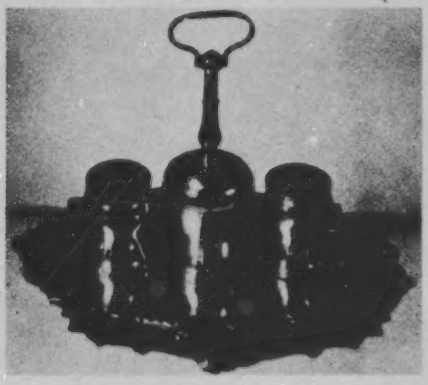
oppressive government—as evidenced in the history of the Mormons in the nineteenth century, to

(4) "the pursuit of happiness," as illustrated in the collision between individuals' and society's interpretations in the antitrust movement in the Age of Enterprise.

At the conclusion of each essay, the author, in brief fashion, has pointed to corresponding, related, or additional issues that we, in our contemporary society, confront and that demonstrate the continuing, never-ending process inherent in the efforts of a society that would retain commitment to fundamental values first stated two hundred years ago. As the *case studies* are selective and representative, so the brief discussions of contemporary concerns relating to the values also are highly selective and illustrative, not comprehensive. They are intended to direct attention toward, rather than fully describe, circumstances and issues arising out of the values in this time of the Bicentennial.

They do, however, remind us again what we long ago learned in the study of human societies: to understand, with humility and recognition of our own frailties, the evidence of less-than-admirable qualities in the record of human events of past generations; to acknowledge the constant shifts in emphasis and interpretations that values proclaimed in one generation of necessity must endure in succeeding generations if they are to retain vitality and credence as societies change; and to realize how difficult and complex is the art of balancing within codes and structures of law the values that give rise to aspiration and provide opportunity to a numerous people in a world of confusing and often ambiguous change.

Carl Ubbelohde



SILVER INKSTAND USED DURING THE SIGNING OF THE DECLARATION OF INDEPENDENCE

CHAPTER ONE

"The Security of Life"— Past, Present, and Future

CASE STUDY: IMPRESSMENT OF SEAMEN

John A. Neuenschwander

A CARTOON FANTASY OF "COLUMBIA TEACHING JOHN BULL HIS NEW LESSON"

TO SECURE THESE RIGHTS: LIFE

The same Continental Congress that approved Thomas Jefferson's draft of the Declaration of Independence, and issued it as a self-signed birth certificate for the American Republic, was engaged in applying one of the functions of government described in the Declaration. "Life" was the first-named of the inalienable rights that governments were instituted to secure, and the Congress was directing a war against Great Britain to win recognition of the independence of the American people and to provide protection against an aggressive British army and navy.

Wars have formed the most dramatic illustrations of governments securing their citizens' lives, in ironic circumstances that bring death to some persons so that life may be secured for others. It is, then, obvious that although governments are created to secure the right to life, that promise of protection is withdrawn from those whose lives, in time of national need, not only cannot be secured, but must be, or are, put in jeopardy. What other limitations and qualifications can one read into the promise of protected, secured "life"? What practices, in the last two centuries, have provided substantive definition to this first objective of created governments?

The definition of the promise to secure the right to life has broadened considerably in two centuries. Although the actual performance of government in securing life may not have kept pace, or today coincide exactly, with presumptions about what one expects a government to provide, the course of time from 1776 to 1976 has brought a widening of shared expectations.

Securing life, at the beginning, probably was very much centered on what had become relatively traditional in the concept of modern nation-states: protection of persons and property against external, hostile, competitive nations. Through diplomatic means when possible, and warfare when necessary, governments would keep secure the people who had surrendered individual sovereignty in part to purchase collective security. But persons and property also demanded protection from internal threats—riots, rebellion, criminals. In the early federal Republic, local, state, and federal responsibilities concurrently converged to meet such threats.

The extension from these rather limited and obvious identified functions to secure life, into the varied mosaic we associate today with securing life, largely developed during the second century of the national experience. Since the late nineteenth century, increasing focus has been directed toward maintenance of life, and protection against conditions and circumstances that, if left unattended, would destroy life as surely as invasion or internal rebellion. Disease and poverty, inadequate housing and food, street crimes and polluted environments, hazards in industrial employment and transportation—all these and many other facets of our contemporary society now are assumed to be correctly within the concern, regulation, and control of government.

And all the while the definitions of "life" become more complex and more perplexing. When does life begin? When should it be considered ended? What role has law, and legislators, and judges in establishing responses to such questions? We near the time when life may begin in a test tube; we already debate the question of when life does or should end—and death occur. How now are governments to proceed in order to fulfill the promise of the eighteenth-century declaration that they are created to secure for their citizens the inalienable "right to life"?

John A. Neuenschwander is a graduate of Mount Union College in Alliance, Ohio. He earned his M.A. from the University of Vermont and his Ph.D. from Case Western Reserve University. He now teaches at Carthage College in Kenosha, Wisconsin. He has published The Middle Colonies and the Coming of the American Revolution *(Port Washington, N.Y.: Kennikat Press, 1974) and* Oral History as a Teaching Approach *(Washington: National Education Association, 1976), as well as articles and reviews.*

To illustrate what happened in the post-Revolutionary era, when the promises of the Declaration of Independence, now buttressed with corresponding constitutional provisions in federal and state documents, and a growing body of statute law, were translated from the realm of abstract, theoretical "rights" into the arena of "real life," Neuenschwander selected the continuing issue of impressment: the forcible capture and retention of American seamen by Britain and other nations. Impressment, in most circumstances, did not end life for the Americans who were captured, but it did for some, and in all cases it deprived citizens of the type of living they expected their government to secure.

This case study demonstrates that the promise of the Declaration of Independence remained an ideological concern to many Americans. Human rights—such as the right to life—were fundamentally involved in the continuing controversy between the young American Republic and the older nation-states of Western Europe.—Carl Ubbelohde

Interpretation of the Term "Life"

If Thomas Jefferson could be reincarnated for the 1976 Bicentennial, he would doubtless be surprised by the hallowed position that his Declaration of Independence holds today. Although Americans had begun to view the preamble to the Declaration as their basic democratic creed before his death in 1826, there was no indication at the time that it would become, as some have termed it, "the most sacred of all political scriptures," or "the immortal emblem of humanity." Jefferson's purpose actually had been much less grandiose; he and his colleagues intended to justify a colonial revolution. That he accomplished more than he knew is a tribute to his understanding of both the American mind and the enduring principles of the Enlightenment. This circumstance was perhaps best explained by his fellow Virginian, Edmund Randolph, who asserted that "it constituted a part of Mr. Jefferson's pride to run before the times in which he lived." [1]

Throughout its two-hundred-year history, the Declaration of Independence has not been without its detractors. In 1856 the Whig politician Rufus Choate dismissed it as a bunch of "glittering generalities"; the twentieth-century philosopher George Santayana considered it but a "salad of illusions." Yet, in general, the concepts and values of the Declaration have proved reliable resources for a changing American society. They often have provided the intellectual and moral ammunition for those who sought to scale the walls of prejudice and assault the citadels of injustice, while vested interests rarely have been able to employ them to defend the *status quo*.

As the United States enters its third century of existence, Jefferson's "self-evident truths" are perhaps even less ascertainable than when he

first penned them in 1776. The technological revolution that followed on the heels of the birth of modern science in the seventeenth century has provided humankind with an awesome control of the earth and in turn a heightened capacity to dominate and subjugate fellow human beings. A recent study of George Orwell's futuristic novel, *1984*, by a noted psychobiologist, revealed that 100 of the 137 technological "predictions" that Orwell made regarding human control devices have already been successfully developed.[2] The human misery that this sort of "progress" portends lies at the heart of the often heard assertion that "it is necessary for Americans to be wiser than their creed if they would survive the twentieth century." [3] It seems particularly appropriate during the Bicentennial observance that the historic role of the immortal phrase in the Declaration, "life, liberty, and the pursuit of happiness," be re-examined so that the contemporary relevance of each of these rights can be understood and the future possibilities explored.

The first of this trilogy of truths, "life" appears to be the most basic and easily definable. Life, after all, is existence and everyone knows what that means. Surprisingly, common agreement on the meaning of this right has been spotty over the past two hundred years. The ink was scarcely dry on the Declaration before differing interpretations of "life" began to appear. One English detractor in 1776 was so perplexed by Jefferson's assertion of an inalienable right to "life" that he finally concluded it was nothing more than a national idiosyncrasy:

> A living man, i.e., a man with life, hath a right to a great many things; but to say that a man with life hath a right to be a man with life, is so purely American, that I believe the texture of no other brain upon the face of the earth will admit the idea.[4]

Another English critic, John Lind, testily inserted a verb, *to enjoy*, before "life" and then proceeded to decry the Americans' denial of this right to those who stood with Britain in the struggle. In the mid-nineteenth century an English writer—Richard Ely Seldon—continued the assault by asserting that the only inalienable right that one logically has is the right to die. In 1876 the noted American lecturer Robert Ingersoll, however, offered a more positive interpretation. In a strongly patriotic Centennial address he declared that an individual's right to "life"

> . . . means that he has the right to make his living. It means that he has the right to breathe the air, to work the land, that he stands the equal of every other human being beneath the shining stars; entitled to the product of his labor—the labor of his hand and of his brain.[5]

Since many critics and supporters alike have offered differing interpretations of the meaning of "life," Jefferson's intentions in 1776 must be given closer scrutiny. To begin with, the trilogy of rights that he set forth in the Declaration were well known to exponents of the eighteenth-century Enlightenment. It appears that John Locke first used this specific phraseology in his *Second Treatise on Government*, and the First Continental Congress also included similar language in its October 14, 1774 resolutions. Although Jefferson saw fit to substitute "pursuit of happiness" for "property," his statement of the "self-evident truths" was still based on the social contract and natural rights theories of Locke. These concepts, taken together, posed a dramatic challenge to the older political theories that were still in vogue throughout Europe.

On the question of "life," the clash between the opposing political theories is particularly noteworthy. It is easy to see how contemporary European critics of the Declaration could scoff at Jefferson's assertion that "life" was an inalienable right. Under the divine right of kings, or Hobbesian-style political theories, "life" was certainly alienable.[6] The security of a person was often a matter of kingly or imperial whim, especially if the life involved was that of a person from a lower socio-economic class. Jefferson was well aware that, like Locke almost a century before, he too was attempting to overturn the constant jeopardy to life that prevailing political theories tolerated because of their acceptance of government over, rather than by and for, the people.

What Jefferson meant to insure was that "life" could not be alienated arbitrarily by a government nor inadequately protected from either domestic or foreign threats. Jefferson also wished to extend this right to every citizen whether he be a prince, a merchant, or a common seaman. Only in this way could the hierarchy of life that characterized the operation of European governments be ended.

As Jefferson noted the year before his death, the purpose of the Declaration of Independence was

> not to find out new principles, or new arguments, never before thought of, not merely to say things which had never been said before; but to place before mankind the common sense of the subject; [in] terms so plain and firm as to command their assent, and to justify ourselves in the independent stand we [were] compelled to take.[7]

In this Jefferson succeeded immediately. But in the years after 1776 the "common sense of the subject" that most interested his fellow Americans was the bill of particulars that he had drawn up against Britain. During the late 1770s and 1780s there was scant interest shown

in Jefferson's preamble. Even the men who drafted the new state constitutions after the Revolution usually turned to George Mason's Virginia Declaration of Rights for whatever infusion of democratic political theory they required. The rediscovery of the preamble to the Declaration of Independence began in the early 1790s. A Philadelphia newspaper signaled the changing focus of American interest in the Declaration by asserting that it was "not to be celebrated merely as affecting the separation of one country from the jurisdiction of another; but as being the result of a rational discussion and definition of the rights of man, and the end of civil government." [8]

The growing American awareness of the significance of the preamble soon became caught up in the emergence of the first political parties in the 1790s. Jefferson's leadership of the Democratic-Republicans and their pronounced avowal of the major ideas of the preamble naturally led the Federalists to belittle both the Declaration and its author. Throughout the late 1790s and early 1800s Federalist spokesmen and editors continually sought to minimize the importance of the Declaration and particularly Jefferson's role in its formulation.[9]

Although the establishment of the Declaration as the national democratic creed made only limited headway before the War of 1812, the inalienability of the rights that it set forth was certainly put to the test during the turbulent early years of the Republic. The Declaration's concepts now were coupled with associated promises from the fundamental charter of the Republic—the Constitution of 1787—with its assertions about insuring domestic tranquility and providing for the common defence. Threats to life were numerous and varied: they included Indian wars, the undeclared naval war with France in 1798-99, and the enslavement of American seamen by the Barbary pirates. The most persistent and serious challenge throughout the 1790s and early 1800s to the federal promises to secure "life," however, was the British practice of impressment.

A Case Study: Impressment as a Threat to Life

Despite the strenuous diplomatic efforts of the first four American Presidents, the United States was unable to convince the British to refrain from forcing thousands of American seamen to serve and even die in the service of the Royal Navy. In the end, impressment played a crucial role in precipitating the War of 1812. The efforts of the United States government to settle peaceably the impressment question between 1796 and 1811 and the intense popular interest in the matter

reveal much about the tension between human and property rights in these years. The supreme irony of this affair is that during their presidencies both Jefferson and Madison appeared more concerned about defending America's economic rights than in protecting the lives of thousands of seamen. In this sense the entire impressment controversy served to educate Americans to the realization that rights are only as sacred and immutable as governments can make them.

The practice of impressment, or "manstealing" as American opponents referred to it, had been the standard method of recruitment by the British Navy since the sixteenth century. Although it could hardly have been an effective recruitment system in terms of morale and *esprit de corps*, the British recognized that without a complete overhaul of their class structure the lowly status of military personnel in general and seamen in particular would always preclude the success of any more enlightened method. Given the intolerable conditions aboard British men-of-war and the many allurements of service on merchant vessels, most seamen did everything they could to avoid these "floating hells." On occasion before the American Revolution the press gangs that initiated this forced conscription had attempted to ply their trade in American ports, but in general the practice was not widespread.[10] After the War for Independence, however, the impressment of American seamen became a chronic, and highly emotional issue in Anglo-American relations.

The secession of the American colonies from the British Empire certainly eliminated any misgivings that naval officials might have had about impressing Americans. This was especially true because of the strong Anglo-American antipathy flowing out of the war. The few British leaders who needed any further justification of the practice had only to observe the extensive recruitment of British seamen for service in the rapidly expanding American merchant marine. Aggressive American captains gave no thought to where a mariner came from; their only concern was whether he could set a jib. Adam Lymburner, a Canadian merchant, reported in 1793 that American captains made a practice of entering British ports shorthanded, for even in London "American ships in the Thames got as many men as they pleased, as their ships afforded that protection which seamen desired." [11]

Given these circumstances, and the expanding manpower needs of the Royal Navy after 1793 because of the French threat, growing numbers of Americans began to find themselves in the custody of press gangs. Even those British admirals and captains who genuinely sought to eliminate the impressment of *bona fide* American citizens were rarely able to control their subalterns in this regard. The tripartite role of the

press gang officer as judge, jury, and jailor enabled him to dispense with any and all legal niceties if he so desired. All too often a seaman's pronunciation of "peas" as "paise" was enough to mark him as an Irishman by birth and thus, under the doctrine of indefeasible allegiance, a British subject. Many other such subterfuges were used whenever a press gang officer wanted a particularly able-looking seaman whom he had spotted in the lineup aboard an American merchant vessel.[12]

For the thousands of American seamen who were forcibly dragged aboard British men-of-war, the experience of impressment was akin to chattel slavery. Even in those instances where physical abuse was neither constant nor excessive, the psychological impact could be devastating. Through newspaper accounts, oral transmission, and the autobiographical writings of impressed seaman like James M'Lean, who wrote a highly dramatic account in 1814 of his seventeen years before the mast, Americans became very familiar with the sufferings of their countrymen. Basil Hill, who had been a midshipman aboard the *Leander* when it impressed numerous American sailors off the coast of New York in 1804, discovered during a visit to New York City twenty-five years later that many of the inhabitants still bridled at the mere mention of his former ship.[13]

At first the Washington Administration moved slowly on the issue. John Jay's instructions as negotiator with Britain in 1794 made no mention of impressment and his controversial Treaty also was silent on the question. In 1796, however, the expansion of the practice of impressment to American vessels on the high seas, coupled with the growing popular demand for action, brought results. On May 28, 1796, President Washington signed into law a bill that was designed to protect American seamen from impressment and provide relief for those who had already been conscripted. Under the provisions of this act, a voluntary certification system was instituted to provide participating seamen with official documentation of their American citizenship. In addition, two agents were appointed (one for the British Isles and the other for the West Indies) to serve as seamen's consuls. Their duties entailed lobbying for the release of impressed American sailors, providing relief for those that were freed, and attempting to curb further impressment of United States nationals through personal diplomacy and, where necessary, publicity.

Considered as a whole the act of 1796 was a failure. Because of the ambiguous and questionable procedures for certification, British officials soon became suspicious of every form of paper protection.[14] With such certificates available in every waterfront district for as little as one dollar, it is not surprising that British press gangs paid scant heed to

SEVENTEEN YEARS'

HISTORY,

OF THE

LIFE AND SUFFERINGS

OF

JAMES M'LEAN.

AN IMPRESSED

AMERICAN CITIZEN & SEAMAN.

EMBRACING BUT A SUMMARY

OF WHAT HE ENDURED,

WHILE DETAINED

In the British Service,

DURING THAT

LONG AND PAINFUL PERIOD.

WRITTEN

BY HIMSELF.

HARTFORD:

PRINTED FOR THE AUTHOR,

BY D. & J. RUSSELL.

1814.

TITLE PAGE OF JAMES M'LEAN'S ACCOUNT OF HIS YEARS AS AN IMPRESSED AMERICAN CITIZEN AND SEAMAN

any papers waved in their faces by a trembling seaman. One woman who made her living off such false papers even went so far as to have a man-size cradle installed in her dwelling so that when called to testify about sailors' backgrounds, she could honestly swear that she had known them "from their cradles." [15]

The only provision of the act that even remotely lived up to the intent of the sponsors involved the seamen's agents. At times, depending on the personality and ambition of the men appointed and the status of international affairs, these agents were able to secure the release of hundreds of Americans and prevent the impressment of many more. During his three years as an agent in London (1797-1800), David Lenox formally applied to the British Admiralty for the release of 2,248 American seamen. Out of this number 500 were actually freed and another 590 were cleared for release by the Admiralty.[16] Few Americans, however, could draw much satisfaction from such small gains. Besides, the agents were dealing with the symptoms, not the cause. Two very important services that the consuls did render were the compilation of accurate statistics on the number of Americans affected and the periodic assessment of the British attitude toward concessions.

The actual diplomatic issues separating the two countries on impressment centered on neutral rights on the high seas and the question of naturalization. It was the British position that the right of visitation and search of neutral vessels in time of war also allowed the seizure of any deserters found on board. The United States countered with the doctrine of territoriality. Under this doctrine, all persons aboard a merchant vessel on the high seas were protected from any foreign nation as if they were standing on the banks of the Mississippi. On the question of naturalization the British took an equally rigid stand. Under the terms of their doctrine of indefeasible allegiance, no naturalization process was ever admissible. While popular opposition to the British claim of undying allegiance was widespread, American negotiators surprisingly expressed almost no objection to this position.[17]

The repeated failure of American and British negotiators, notably in 1800, 1803, and 1806, to reach a settlement of the impressment issue was perhaps more the result of British intransigence than any other single factor. For even the Ministry of All the Talents, certainly the most sympathetic of all the British administrations during these years, was unwilling to offer the Monroe-Pinkney mission anything more than informal pledges in 1806.[18] When Jefferson subsequently rejected the treaty that Monroe and Pinkney had negotiated, precisely because of the absence of British concessions on impressment, there was no move on the part of the British to reopen negotiations. This episode is indica-

tive of the unyielding British stand on the question. Since the defeat of Napoleon Bonaparte appeared to be a necessity for British survival, and impressment the only means of maintaining the level of naval strength necessary to achieve that end, no ministry was willing to appease the United States if there was the slightest risk that it would weaken the Royal Navy.

What it came down to, then, was the willingness of the British to risk antagonizing the United States in order to achieve the grand objective of defeating Napoleon.[19] Insofar as the British needed any further justification for their refusal to yield on impressment, they had only to consider the unwillingness of the United States to curtail or halt the desertion of thousands of British seamen to American merchant vessels. One could hardly blame the British for interpreting this stand as an American admission that economic growth and profits were deemed more inalienable than sailors' lives. With the American merchant marine expanding at an annual rate of nearly 70,000 tons in the early 1800s, an estimated 4,000 additional seamen were needed each year to keep pace.[20] Since a mariner's life in this period was on a par with that of a common laborer in terms of income and social standing, and certainly more hazardous, willing recruits were rare. Under these circumstances American captains naturally accepted sailors with no questions asked.

These circumstances almost made impressment the direct cause of war between Great Britain and the United Stataes in 1807. The incident that touched off the war fever was the *Chesapeake* affair. On the morning of June 22, 1807 a recently commissioned United States frigate, *Chesapeake*, had weighed anchor and put to sea for a shakedown cruise. Among her crew members was a sailor named Ratford, who had only recently enlisted after deserting from a British gun ship, *Halifax*, during a stopover at Hampton Roads. There was nothing unusual about the presence of a British deserter aboard an American man-of-war, but in this instance circumstances conspired to make it a very special case. Because of the especially high incidence of desertion at this time and the flat refusal of local officials to offer any assistance, the British commander-in-chief at Halifax, Vice Admiral George C. Berkeley, had recently authorized British warships in the area to search the *Chesapeake* for British sailors. When the British frigate *Leopard* endeavored to carry out this order, a fight ensued and the ill-prepared *Chesapeake* was forced to strike her colors after several broadsides had killed three men and wounded 18 other crew members. A press gang from the *Leopard* subsequently took off four seamen, and the *Chesapeake* was left to crawl back to Hampton Roads.

The news of this event immediately evoked such a storm of national

outrage that oldtimers compared it to the reaction after Lexington and Concord. Even the deep-seated, partisan division between the Federalists and the Republicans was forgotten amidst the outpouring of patriotic fervor. According to one knowledgeable political observer, "All distinctions of federalism and democracy are vanished. The people are ready to submit to any deprivation. . . ."[21] But Jefferson, ever the man of peace, chose not to unsheath the American sword. Instead, he sought to use the threat of war aroused by the *Chesapeake* affair to coerce the British into relenting on impressment. When Britain flatly refused even to consider the *Chesapeake* affair and impressment together, Jefferson's great gamble had failed. By the fall of 1807 the country was no longer in a mood for war and Jefferson turned to the embargo.

During the next four years (1807-1811) the United States government remained silent on "manstealing." Presidents Jefferson and Madison virtually removed it from the negotiation list of American diplomats, and the halls of Congress ceased to ring with denunciations of kidnapping on the high seas. While British press gangs were admittedly less active during most of this period and the Orders in Council were the chief cause of American ire, this sudden, official disinterest in impressment is not easily understood.

The most plausible explanations center upon the determination of Jefferson and Madison to force repeal of both the Orders in Council and Napoleon's various decrees by means of economic pressure. They apparently considered the disruption of American commerce the most serious threat to the nation at that time. The obdurate refusal of British leaders to make any concessions on impressment also may have convinced them of the futility of even raising the issue.

Life, Impressment, and the War of 1812

The virtual abandonment of the impressment issue by the government after 1807 did not lessen the interest or concern of millions of Americans. For these citizens it was like an unhealed wound. Periodic reports of new impressments and the sufferings of those already serving in the Royal Navy kept the issue alive. Such news was also a constant reminder of the *Chesapeake* affair and the national humiliation that it represented. Although he was as yet unwilling to change the government's position, President Madison admitted to William Pinkney late in 1810 that

> there has been a constant heart-burning on the subject of the Chesapeake, and a deep and settled indignation on the score of impressments, which can

never be extinguished without a liberal atonement for the former, and a systematic amendment of the latter.[22]

Despite Madison's apparent recognition of the widespread popular opposition to impressment, he kept silent on the issue until his war message of June 1, 1812. Then, to the surprise of many, the President's rationale for a declaration of war began with a strong indictment of impressment. He denounced it as a "crying enormity" by which

thousands of American citizens, under the safeguard of public and of their national flag, have been torn from their country and from everything dear to them; have been dragged on board ships of war of a foreign nation and exposed, under the severities of their discipline, to be exiled to the most distant and deadly climes, to risk their lives in the battles of their oppressors, and to be the melancholy instruments of taking away those of their own brethren.[23]

The sudden re-emergence of the impressment issue as one of the major grounds for war led many Federalists and even some antiwar Republicans to question immediately the validity of this issue. Was Madison merely trying to arouse war sentiment by resurrecting a very emotional but essentially minor issue? If so, the second half of the Administration's war cry, "Free Trade and Sailor's Rights," had a very hollow sound.

Historians beginning with Henry Adams in the late nineteenth century have also been troubled by the jack-in-the-box quality of the impressment issue. As a result, the weight of this issue in the decision for war has never been satisfactorily determined. Henry Adams expressed what amounted to neo-Federalist doubts about the importance of this issue to Madison and the Republican Party; nevertheless, he considered it a major cause because of its appeal to the masses. Throughout the nineteenth century most American historians accepted the so-called "maritime interpretation" of the cause of the War of 1812. As set forth by John Bach McMaster and Alfred Thayer Mahan, this interpretation credited British encroachments on neutral rights with precipitating war.[24]

A swing away from this position began in the 1920s and 1930s with the publication of studies by Louis M. Hacker, Julius W. Pratt, and George R. Taylor. While Hacker and Pratt chose to emphasize western land hunger and expansion respectively, Taylor argued that the economic woes of the South and West prompted those sections to favor war against Britain. On the whole, the work of these scholars has served to call attention to the importance of non-maritime causes.[25]

Since the mid-1950s there has been a shift back towards the older

maritime interpretation. While recognizing the importance of some of the so-called "western grievances," scholars like Bradford Perkins, Reginald Horsman, and Norman Risjord have used the concept of national honor to explain the decision for war and the primacy of maritime issues. On the whole, however, they have tended to view the Orders in Council as the chief despoiler of national honor and thus, wittingly or unwittingly, they have described the War's purpose more as a defense of economic than of human rights. While the restraints on American economic rights that they emphasize certainly were a slap at national sovereignty, they have failed to explain that the inability to provide adequate security for "life" penetrated deeply into the public conscience of the Republic.

Thus the significance of impressment as a challenge to the right to "life" as set forth in the Declaration of Independence has been overlooked. The reason for this neglect is obvious. Historians have always considered the Orders in Council and impressment as adjoining maritime issues. Nevertheless, from the standpoint of definable national interests and values, the Orders fall under the heading of property rights while the lives of seamen fit under the rubric of human rights. Only by separating the two grievances in this way can the War of 1812 be understood as something more than a calculated war for economic independence.

Americans living during the years of the War might have understood this. Through the efforts of Robert Wright in the United States Congress and Hezekiah Niles in the press, the distinction was clearly made. During his years in the United States Senate, and later in the House of Representatives, Wright was the most active opponent of impressment. A distinguished veteran of the Revolutionary War and a successful planter-lawyer, he was first elected to the Senate by the Maryland Legislature in 1801. Through his term he was an ardent supporter of Jefferson.[26]

Wright's first significant attack on impressment occurred early in 1806 amidst growing public resentment over the increasing numbers of Americans being taken. When he introduced his bill for the protection and indemnification of American seamen on January 20, 1806, probably few of his colleagues were aware of the strong measures that Senator Wright proposed to end what he deemed naked piracy. Under the provisions of his bill, American seamen were not only authorized to resist impressment by any means but to actually receive a $200 bounty for all such successful acts. Another provision provided for a $60 per month indemnity to impressed American seamen to be paid by attaching debts owed British creditors. Despite Wright's reassuring words that "I trust I will not be thought too nervous, when it is considered that we have

just cause for war," his bill was considered too provocative and postponed to the next session.[27]

Later that same year Wright was elected Governor of Maryland and his departure from the United States Senate interrupted for a time his campaign in behalf of American seamen. When he returned to Washington in 1810 as a Congressman from Maryland, he quickly resumed his earlier opposition to impressment. In the debate over the pro-war report of the Foreign Relations Committee in December 1811, Wright took the floor to refute the charge made by Congressman John Randolph of Virginia that only certain economic interests favored war with Britain. It was his opinion that the Virginia Congressman had his priorities confused:

> Sir, the violations of the commercial rights of which we complain do not embrace the carrying trade, properly so called, but also the carrying of the products of our own soil, the fruits of our own industry; these, although injurious only to our property, are just causes of war. But, sir, the impressment of our native seamen is a stroke at the vitals of liberty itself, and although it does not touch the *"natale solum,"* yet it enslaves the *"nativos filios"*—the native sons of America; and, in the ratio that liberty is preferable to property, ought to enlist the patriotic feelings of that honorable member, and make his bosom burn with that holy fire that inspired the patriots of the Revolution.[28]

Not only did Wright speak out against the evils of impressment whenever the opportunity presented itself, but he also sought to win Congressional approval of a revised version of his 1806 bill for the protection and indemnification of American seamen. Although his efforts in 1810 and 1811 to attach anti-impressment amendments to the bills supplementing the Non-Intercourse Act were unsuccessful, with the growing war spirit in Congress at the end of 1811, Wright no doubt realized that his bill stood a good chance of passage.

Since his revised bill still condemned impressment as an act of piracy punishable by death and empowered the President to take whatever action he saw fit to discourage future violations, the measure again amounted to a declaration of war in all but name. Throughout the early months of 1812 the bill moved steadily through the House, and by April was engrossed for its third reading. A number of newspapers across the country supported the measure and it actually seemed certain of passage in early June until the formal Declaration of War made it unnecessary.[29]

While Robert Wright was toiling in Congress from 1810-1812 to convince his colleagues of the central importance of impressment, Hezekiah Niles was rendering a similar service for the general public.

Niles, like so many other outstanding editors in the early years of the Republic, had climbed all the way up the ladder after starting as a lowly apprentice. A staunch Democratic-Republican in sentiment, he first won national attention as editor of the pro-Republican *Baltimore Evening Post*. His editorials defending Jefferson's foreign policy were so effective that they were collected in 1807 and published in book form.[30]

During the summer of 1811, Niles launched a new type of newspaper that would deal primarily with national news, carry no advertising, and rely entirely upon subscriptions for income. He pledged further to keep *The Weekly Register* non-partisan and as accurate and thorough in its coverage as he could make it.[31] Before the year was out, Niles had over 3,500 subscribers and the paper was on its way to becoming *The New York Times* of its day.

Since his newspaper was intended for a national readership at a time when almost all papers were locally oriented, the influence of *The Weekly Register* was far in excess of its subscription totals. Throughout the winter of 1811-1812 Niles continually and forcefully advocated war with Britain. As he noted in his editorial on December 7, 1811, ". . . the cup of humiliation has been drained of its very dregs, forbearance has become a crime, and patience ceased to be a virtue."[32] That Niles considered impressment the number-one American grievance against Britain was obvious to even the casual reader.

Typical of his pronouncements on this matter was an editorial in April, 1812, in which he recited the tremendous suffering that this form of white slavery inflicted upon both the individuals and their families. He noted further that a recent State Department report set the number of American citizens forcibly retained in the British Royal Navy at 6,257. Niles concluded his editorial with a hawkish pronouncement:

> Accursed be the American government, and every individual of it, who by the omission or commission of any thing, shall agree to make peace with Great Britain, until ample provision shall be made for our impressed seamen, and security shall be given for the prevention of such abominable outrages in future.[33]

Immediately after Congress approved the Declaration of War, Niles expressed his satisfaction with the decision. As always impressment was the paramount issue and to his way of thinking the major reason for the war:

> The indignity, abuse and destruction of our seamen, and through them, the violent assault on the sovereignty of the country itself, has long cried for

revenge, as preventive of the practice in the future: for rather than admit the principle for one solitary hour, or in a single instance, that an American seaman, or a seaman sailing under the American flag, may be kidnapped by those *Algerines*, there is not a *true man* among us that would not exclaim—*"war—a war of extermination against them!"*[34]

The tortuous road to war that Madison and the Republican Party traveled from 1811 to 1812 is without parallel in American history. All other major conflicts were preceded by immediate and direct provocations, like the explosion of the *Maine* or the Gulf of Tonkin incident. This anomaly helps to explain both the large Congressional vote against war (79—49 in the House and 19—13 in the Senate) and the extensive antiwar sentiment throughout the duration of the struggle. According to Samuel Eliot Morison, this was the most dissent-ridden war in American history, including the recent conflict in Viet Nam.[35] Unfortunately, historians have generally used the strong opposition to the war in the New England States to discount the importance of impressment as a cause. Such arguments usually center on the general indifference to the issue in the region despite New England's strong maritime interests. This argument also assumes a level of popular support for Federalism in New England that was never reached, even at the height of that party's power in the mid-1790s. If the subject of antiwar sentiment in New England is approached from the standpoint of the historic evolution of the first two American political parties, and a distinction is drawn between Federalist and popular opposition in the section, the plausibility of the earlier thesis vanishes.

Since both the Federalists and Democratic-Republicans in the 1790s considered themselves to be Founding Fathers, and there was as yet no accepted concept of the loyal opposition, the depth of their animosity for one another is perhaps unequaled in the annals of American political history. Each side tended to view the other in almost apocalyptic terms. The profound domestic influence that foreign affairs had upon the young nation served to further exacerbate interparty relations. Given the pro-British bias of the Federalists and the continuing efforts of their spokesmen to make light of the impressment issue, it is not surprising that the Party opposed war with Britain in 1812. Had Jefferson called for war in 1807 in the wake of the *Chesapeake* affair, the Federalist Party could not have presented such a united opposition. When Madison raised the specter of impressment five years later, however, most Federalists interpreted it as a strictly partisan maneuver to drum up support for the war.

When assessing the extent of antiwar sentiment in New England during the struggle with Britain, the statistics on sectional troop con-

tributions are enlightening. A total of nineteen regiments were supplied to the regular army by the five New England states, compared with fifteen from the Middle Atlantic states and only ten from the South.[36] While these figures alone do not prove that there was less opposition to the war among the people of New England than has been previously thought, they do point up the very real possibility that the Federalists claimed far more grass roots support than they actually enjoyed.

In the final analysis, President Madison and the Republican Party belatedly embarked upon a war that the people had been ready to fight five years earlier.[37] The attendant confusion over the war's purposes and objectives may well be blamed on Madison and Jefferson. They were certainly less willing than many of their fellow citizens to break with the policy of avoiding war at all costs that Washington and Adams had established.

Memories of America's woes during the War for Independence and their awareness that the country was unprepared for war were also deterrents. By the fall of 1811, however, when all other alternatives had been exhausted, Madison realized that the question had come down to submission or war. With the Federalists waiting in the wings should the Republican Party falter, he reluctantly prepared for war. If he had been a more adroit or less scrupulous President he might have manufactured an appropriate incident to arouse the necessary unity for war. As it was, Madison recognized at the eleventh hour that impressment was the one issue that could engender the greatest popular support for the conflict. While he and Jefferson had been busy devising intricate economic sanctions against Britain and France, the impressment issue lay smoldering in the hearts of millions of Americans. This grievance, more than the violations of commercial rights or the Indian attacks that the British ostensibly encouraged, lay at the root of the national humiliation that both compelled and enabled the Republican Party and President Madison to go to war in 1812.

In this rather convoluted and muddled way the American government finally did act to make the right to "life" as inalienable as was intended in the Declaration. The 1811 Report of the Committee on Foreign Relations of the House of Representatives urged as much in supporting preparation for war:

> If it be our duty to encourage the fair and legitimate commerce of this country by protecting the property of merchant; then, indeed, by as much as life and liberty are more estimable than ships and goods, so much more impressive is the duty to shield the persons of our seamen, whose hard and honest services are employed equally with those of the merchants in advancing under the mantel of its laws, and interests of their country.[38]

Security of "Life" in Our Times

At the conclusion of the War of 1812 few contemporaries could have foreseen that the United States would not soon again enter a war as the weaker nation. The tremendous physical and economic growth that Americans experienced in the years after 1815 provided the resources to make the United States a major world power by the end of the nineteenth century. The virtually complete security of "life" against external threats that the federal government was able to provide continued into the twentieth century, ending abruptly in 1949 with the Russians' announcement that they, too, had the atomic bomb.

The result is that in 1976, as the nation enters its third hundred years of existence, the security of "life" seems to be more threatened than ever before. In the face of the constant threat of nuclear war, and a possible global ecological disaster, the ability of the United States government to reasonably guarantee the most basic of all rights by means of conventional foreign policy is no longer certain.

At the same time, internal threats to "life" command attention. Most Americans, like most human beings, tend to give first priority to the problems directly affecting their daily lives. In their own communities they debate issues centering on threats to "life"—crime, capital punishment, abortion, euthansia—these are the sorts of concerns that arouse public attention and controversy.

Statistics compiled by the Federal Bureau of Investigation indicate that the rate of serious crime in the United States has more than doubled since 1961. That "fact" must be stated cautiously, because it may partly reflect increasingly complete reporting by local law enforcement agencies. Nonetheless, the crime problem, in the public mind, clearly has reached crisis proportions. The growth in gun sales, and security and alarm devices alone, is indicative of how fear of crime permeates all parts of the society. This is especially true because the sharp rise in the incidence of crime in rural and suburban communities has subjected all Americans to what used to be considered only an urban problem.

A recent study by a mathematician at the Massachusetts Institute of Technology projected that one out of every eleven children born in Atlanta, Georgia, in 1974, would eventually be murdered if she or he chose to live out life in that city. In this respect the words of a teacher in an inner-city day-care center sum up the growing apprehension under which many Americans live: "You are aware of crime all the time here. Life could end at any time."[39]

The United States Supreme Court decisions prohibiting the death penalty (1972) and legalizing certain types of abortions (1973),

together with controversy and litigation involving euthansia or "mercy killing," aroused unprecedented public interest in the security of "life." Whether the public's "right" to end the life of a convicted felon on death row will be returned, or the right to "die with dignity" will be legalized, is by no means certain. We now debate when life begins and when it should be considered ended. Our attempts to define and determine such questions reflect the Jeffersonian assertion that life should not be taken for granted. As Daniel G. Maguire noted in a recent article, "Life is the good thing and the precondition of all good things. Any decision to end it in any context, for self or for another, must be slow, deliberate, and reverential."[40]

Less omnipresent in the daily lives of Americans, but ultimately more lethal, is the continuing threat of nuclear war. Unlike the immediacy of the threat posed to "life" by internal dangers, a nuclear holocaust seems abstract and remote. The enormity of such a possibility doubtless precludes extensive preoccupation with its occurrence.

Then, too, the periodic announcements of nuclear arms control agreements may provide the public with a limited sense of security. Because of the seeming complexity of the nuclear arms jargon (ICBM, MIRV or SLBM) most Americans have failed to recognize the limited, merely cosmetic effect of these agreements. As former Defense Department Director of Research Herbert York sadly noted, "after 30 years of attempts to achieve some kind of serious disarmament, not one single weapon has ever been destroyed or even moved as a result of an agreement."[41] If anything, some arms control treaties have actually stepped up the arms race. The much heralded Limited Test Ban Treaty of 1963 is a case in point. As a result of the ban on atmospheric testing which it imposed, the United States and Russia greatly expanded their underground nuclear testing programs. One of the eventual results was the development of the even more frightening MIRV (multiple independently targeted re-entry vehicle). A review of Federal defense budgets in recent years quickly reveals that nuclear arms control agreements result at best in reallocations of funds rather than in any reductions. In order for the United States and Russia to break out of this vicious circle and launch a genuine effort to avert the impending nuclear holocaust, the words of John Stuart Mill should be heeded, "Against a great evil a small remedy does not produce a small result, it produces no result at all."[42]

The inexorable spread of nuclear weapons is another worrisome and even less controllable facet of the arms race. The announcement on May 18, 1974, that India had exploded a nuclear bomb was a severe blow to the limitation efforts of the Treaty on the Non-Proliferation of Nuclear

Weapons that took effect in 1970. There are presently at least seven more countries that are non-parties to the 1970 NPT that already have or soon will have the technological capability to construct nuclear devices. These include: Argentina, Brazil, Egypt, Israel, Pakistan, South Africa and Spain.[42] Because of the vast commercial potential of nuclear energy, particularly in light of the current energy crisis, the temptation to exploit the need for energy may soon result in even greater proliferation due to the covert conversions of materials from peaceful to military purposes. It is possible that the distribution of nuclear weapons may already be too extensive to prevent with any certainty the kind of human error that formed the central theme of such popular films as *Dr. Strangelove* and *Fail Safe*.

According to some ecologists and environmentalists, nuclear war is survivable in comparison to the systematic destruction of the earth's life-sustaining ecosystem, destruction which they claim is well underway. Paul Ehrlich likens the present world situation to that of a car speeding down a hazardous mountain road with only failing brakes to rely on. Skillful manipulation by the driver may keep the car on the road for a time, but before it can reach the bottom of the mountain the continuing increase in speed will make a crash inevitable.[44]

Although some Americans have become more conscious of the possibility of environmental disasters due to the initiation of observances like Earth Week, the tendency is still to discount the danger. Developed countries like the United States are confident that their vaunted capacity for "technological fix" can avert any serious threats to the earth's ecosystem. Unfortunately, the complexity of the chain of life may obscure harmful alterations in the environment so long that human restorative efforts may be too little and too late.[45]

In the last analysis, the ability of the United States government to guarantee "life" in the future may well be predicated on whether or not the concept of "spaceship earth" is substituted for that of "lifeboat America." While the current Bicentennial observances tend to be ethnocentric and often jingoistic in character, the possibility of a similar Tricentennial observance in 2076 seems remote. Although it is unfortunate that the Bicentennial observance has failed to alert Americans to the need for truly effective world leadership, self-interest may dictate that course of action in the years ahead as the global threats to the inalienable rights become more real.

It was the hope of Benjamin Franklin that someday respect for the common rights of people would exist everywhere in the world. For most of the past two hundred years the United States officially has articulated its position as advocate and defender of human rights. Although the

historical record reveals great gaps between rhetoric and reality, sometimes the gap has been narrowed, even closed. To fully square theory and practice—to make the right to life more than an empty promise—the American people must turn their attention to the preparation and implementation of a Declaration of Interdependence to secure the right to life for every inhabitant of the earth.

Persistent Questions Related to the "Right to Life"

- Is the promise of the Declaration of Independence that government is instituted to secure the "right to life" limited to securing protection against unnecessary death? Or do *restrictions* on life, not less than death itself, warrant attention?
- What is the responsibility of government to secure a "minimum standard of living" for all persons necessary to fulfill the "right to life"? Does the right to "exist" also include the right to "maintain" life?
- Death in warfare and death as punishment for crimes illustrate two categories in which the community, through its government, exacts forfeiture of life, not protection of it. How does one define the individual "right to life" when society, by law, alienates that "unalienable" right?

FOR FURTHER READING

On "Life" and the Declaration of Independence:

Dumbauld, Edward. *The Declaration of Independence and What It Means Today*. Norman: University of Oklahoma Press, 1964.

Ginsberg, Robert, ed. *A Casebook on the Declaration of Independence*. New York: Thomas Y. Crowell Company, 1967.

Hawke, David. *A Transaction of Free Men*. New York: Charles Scribner's Sons, 1964.

On Impressment and the War of 1812:

Brown, Roger H. *The Republic in Peril: 1812*. New York: Columbia University Press, 1964.

Horsman, Reginald. *The Causes of the War of 1812*. Philadelphia: University of Pennsylvania Press, 1962.

Perkins, Bradford. *Prologue to War: England and the United States, 1805-1812*. Berkeley: University of California Press, 1963.

Zimmerman, James Fulton. *Impressment of American Seamen*. New York: Columbia University Press, 1925.

FOOTNOTES

[1] David Hawke, *A Transaction of Free Men* (New York: Charles Scribner's Sons, 1964), p. 22.
[2] *The Milwaukee Journal*, July 13, 1975.
[3] Hawke, p. 5.
[4] Robert Ginsberg, ed., *A Casebook on The Declaration of Independence* (New York: Thomas Y. Crowell Company, 1967), p. 7.
[5] *Ibid.*, p. 69.
[6] Richard I. Aaron, *John Locke* (Oxford: Clarendon Press, 1971, third edition), p. 270.
[7] Thomas Jefferson to Henry Lee, May 8, 1825, in Ginsberg, p. 32.
[8] Philip F. Detweiler, "The Changing Reputation of the Declaration of Independence: The First Fifty Years," *William and Mary Quarterly*, 3rd ser., 29 (October, 1962): 563.
[9] *Ibid.*, pp. 565-66.
[10] James Fulton Zimmerman, *Impressment of American Seamen* (New York: Columbia University Press, 1925), p. 11.
[11] Richard N. Van Alstyne, "The American Empire Makes Its Bow on the World Stage, 1803-1845," in *From Colony to Empire: Essays in the History of American Foreign Relations*, ed. William Appleman Williams (New York: John Wiley and Sons, Inc., 1972), pp. 53-54.

[12] Thomas A. Bailey, *A Diplomatic History of the American People* (New York: Appleton-Century-Crofts, 1969, eighth edition), p. 119.
[13] Albert Bushnell Hart, ed., *American History Told by Contemporaries* (New York: The Macmillan Company, 1968, third edition), 2:385.
[14] Zimmerman, p. 61.
[15] Bailey, p. 120.
[16] Zimmerman, p. 75.
[17] *Ibid.*, p. 21.
[18] Bradford Perkins, *Prologue to War: England and the United States, 1805-1812* (Berkeley: University of California Press, 1963), pp. 92-93.
[19] Reginald Horsman, *The Causes of the War of 1812* (Philadelphia: University of Pennsylvania Press, 1962), pp. 263-64.
[20] Van Alstyne, p. 54.
[21] Bailey, p. 123.
[22] James Madison to William Pinkney, October 30, 1810, in *The Writings of James Madison*, ed. Gaillard Hunt (New York: G. P. Putnam's Sons, 1908), 8:120.
[23] George Rogers Taylor, ed., *The War of 1812: Past Justifications and Present Interpretations* (Boston: D. C. Heath and Company, 1963), p. 29.
[24] Bradford Perkins, ed., *The Causes of the War of 1812: National Honor or National Interest?* (New York: Holt Rinehart and Winston, 1962), pp. 1-5.
[25] *Ibid.*
[26] Frank F. White, Jr., *The Governors of Maryland* (Annapolis: The Hall of Records Commission, State of Maryland, 1970), pp. 55-58.
[27] *Annals of Congress*, Ninth Congress, First Session, January 20, 1806, p. 467.
[28] *Ibid.*, Twelfth Congress, First Session, December 11, 1811, p. 467.
[29] Zimmerman, p. 182.
[30] Norval Neil Luxon, "H. Niles, The Man and the Editor," *The Mississippi Valley Historical Review* 28 (June, 1941): 30-31.
[31] Richard G. Stone, *Hezekiah Niles as an Economist* (Baltimore: Johns Hopkins University Press, 1933), p. 603.
[32] *The Weekly Register*, December 7, 1811.
[33] *Ibid.*, April 18, 1812.
[34] *Ibid.*, June 27, 1812. The word *Algerines* refers to the Barbary pirates with whom the United States fought a comic opera war in the early 1800s over the seizure of American vessels and crews. The willingness of the government to fight for seamen's rights in this incident was often used to prod Jefferson and, later, Madison into taking similar action against Britain over impressment.
[35] Samuel Eliot Morison, "Dissent in the War of 1812," in *Dissent in Three American Wars*, ed. Frederick Merk (Cambridge: Harvard University Press, 1970), p. 3.
[36] *Ibid.*, p. 4.
[37] There is considerable disagreement among historians about Madison's role in the war determination process. Bradford Perkins claims that, due to Madison's lack of leadership, Republican Party war hawks actually forced the issue. Perkins, pp. 378-382, 399-406, 425-426. Irving Brant, however, maintains that Madison guided the war movement from start to finish. Irving Brant, *James Madison: The President, 1809-1812* (Indianapolis: The Bobbs-Merrill Company, Inc., 1956), pp. 426-431, 478-483.
[38] Taylor, p. 3.
[39] "The Crime Wave," *Time* (June 30, 1975): 12-13.
[40] Daniel C. Maguire, "Death, Legal and Illegal," *The Atlantic* (February, 1974): 85.

[41] Robert J. Bresler, "Arms Control: The Incomplete Vision," *Intellect* 103 (January, 1975): 222-225.
[42] Thomas A. Halsted, "The Spread of Nuclear Weapons—Is the Dam About to Burst?" *The Bulletin of the Atomic Scientists* 31 (May, 1975): 8-12.
[43] Bresler, p. 225.
[44] Paul R. Ehrlich, Anne A. Ehrlich, and John P. Holdren, *Human Ecology Problems and Solutions* (San Francisco: W. H. Freeman and Company, 1973), p. 16.
[45] Barry Commoner, *The Closing Circle: Nature, Man, and Technology* (New York: Alfred A. Knopf, 1971), pp. 10-11.

CHAPTER TWO

"Is It a Crime for a United States Citizen To Vote?"

CASE STUDY: THE TRIAL OF SUSAN B. ANTHONY

Karen Tucker Anderson

THE WEAKER SEX

TO SECURE THESE RIGHTS: LIBERTY (I)

The second-named of the triad of inalienable rights in the Declaration of Independence is "liberty," a single word, subject as are all such words to an ever-changing, many faceted stream of definitions. Liberty is asserted to be an object for which governments are created; securing liberty can be read in fuller context by noting that (in Jefferson's words) governments that are created to secure liberty should derive their just powers from the consent of the governed. Those concise words, understood within the mix of understandings and commitments, and assumptions and convictions of the Revolutionary generation, have a very specific and precise meaning: The new United States, to be created upon the foundations of "self-evident truths" delineated in the Declaration, was to be a federal republic.

A republic, to the people who made the Revolution, was not only not a monarchy; it was a representative government. In their structuring of constitutions for the new states, and in their federal constitutions—first in the Articles of Confederation and then in the Constitution of 1787—the Americans described the extent and degree of representativeness upon which they would base their Republic. Officers of government, both state and federal, would be chosen (elected in most cases, appointed by those elected in others) from among the citizenry by some of the citizens.

Initially, no attempt was made to describe or legislate a national electorate. Rather, that increasingly challenging responsibility was left within the powers of the separate, sovereign states. As the 1787 Constitution prescribed the process, whoever was eligible under the statutes of a state to participate in the election of representatives to the most numerous (lower) house of the state legislature automatically was incorporated within the electorate competent to choose members of the federal House of Representatives.

The states, of course, varied considerably in the way they described eligibility for participating in elections. Suffrage and citizenship were not the same; only part of the citizens was encompassed within the group allowed to choose, or be chosen, officers of the commmunity. Sex, age, race, religion, property holdings, bondage, length of residence—qualifications established on these and other criteria severely restricted the size of the favored,

enfranchised group. For all others, the right to liberty did not extend far enough to allow participation in the political processes.

A very traditional—one might say, old-fashioned, but nonetheless valid—schema for describing political development in the American Republic traces the increasing democratization of government since the ratification of the federal Constitution. The elimination of restrictions on suffrage and office-holding, and the expansion of the favored group who could qualify to participate in elections form central themes for explanation of change, especially during such historical decades as the Age of Jackson and the Progressive era. The inalienable right to liberty, secured by governments, may be illustrated in application, and measured as actual practice against promise, in a variety of ways. But one of the those ways (and a very central one in the Americans' assumptions about who they have been, and are, and what their society has been, and is, and should be) examines the opportunity—the liberty—to participate in political processes.

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To illustrate the promise and practice related to the "right to liberty," she selected the story of Susan B. Anthony's attempt to vote in an election, and the litigation that followed that attempt. As a case study, it illustrates an occasion in the history of the American people when a pronounced value of the Revolutionary generation was directly tested; when a group within American society was convinced that its members were being deprived of their rights and proceeded to the task of correcting that inequity. This story, of course, like all the case studies in this Yearbook, is illustrative and representative only; its utility rests upon its illumination of an effort that extended over many decades and that was carried forward by many persons and groups in American society. What they shared with each other was their determination to see that the practices of their society corresponded with the promises that the Revolutionary generation had left as its endowment to posterity.—Carl Ubbelohde

The Issue: What Should Be the Participatory Role of Women As Citizens?

> . . . they who have no voice nor vote in the electing of representatives do not enjoy liberty, but are absolutely enslaved to those who have votes and to their representatives; for, to be enslaved is to have governors whom other men have set over us, and be subject to laws made by the representatives of others, without having had representatives of our own to give consent in our behalf.—*Benjamin Franklin*[1]

> . . . by all the great fundamental principles of our free government, the entire womanhood of the nation is in a "condition of servitude" as surely as were our revolutionary fathers, when they rebelled against old King George. Women are taxed without representation, governed without their consent, tried, convicted, and punished without a jury of their peers. And is all this tyranny any less humiliating and degrading to women under our democratic-republican government to-day than it was to men under their aristocratic, monarchical government one hundred years ago?—*Susan B. Anthony*[2]

In 1776 the leaders of the rebellion of the American colonies declared their independence from England, justifying their action with a succinct statement of Enlightenment political thought and a list of charges against King George III in support of their contention that his policies were subverting their liberties. The break from the mother country culminated years of conflict over the nature and extent of Parliamentary jurisdiction in colonial affairs. The various attempts by the English to impose new and higher taxes in the New World and to strengthen their control over the recalcitrant colonists seemed to the Americans to signify the existence of a deliberate plot to extinguish their fundamental freedoms. In the opinion of many Americans, submission to the lesser encroachments on liberty posed the danger of more iniquitous inroads on their rights at a later time.

The widening conflict spawned a series of inquiries into the nature and source of political authority. British statesmen and theorists, and their colonial supporters, insisted that the established authorities, and the laws they promulgated, existed separately from and were superior to

their subjects. They denied that sovereignty was capable of division or limitation. In his *Taxation No Tyranny*, a reply to the Americans who were resisting British authority, Samuel Johnson contended that:

> There must in every society be some power or other form from which there is no appeal, which admits no restrictions, which pervades the whole mass of the community, regulates and adjusts all subordination, enacts laws or repeals them, erects or annuls judicatures, extends or contracts privileges, exempt itself from question or control, and bounded only by physical necessity.[3]

Jonathan Boucher, an Anglican minister in the colonies and a Tory, agreed with this position, asserting that "all government, whether lodged in one or in many, is in its nature, absolute and irresistible."[4] He further argued that all civil authority derived its legitimacy from God, who enjoined obedience to it.

The assertion of Great Britain's unqualified right to administer its colonies in whatever way it decided contributed to the disquiet among American dissidents and prompted them to rebut British notions about the source of political authority. In support of the American viewpoint, James Otis strongly denounced the position that the rights of subjects were dependent on the will of the sovereign, contending that the natural rights of an individual were derived from "the law of nature and its author. This law is the grand basis of the common law and of all other municipal laws that are worth a rush."[5] The legitimacy of the law and of the constituted authorities thus was based on their protection of the individual's natural rights. In the words of Thomas Jefferson, "Kings are the servants, not the proprietors of the people."[6] The people were the constituent power of sovereignty, giving up some of their freedom for the common good, but only to the end that their basic liberties be preserved.

Having stated that government could legitimately function only with the consent of the governed, the American rebels declared their opposition to British taxes and other measures on the grounds that the British laws had been promulgated without the consent of the colonists. The British denied the charge that the colonists were being taxed without representation, contending that each member of Parliament represented all British subjects and that therefore the Americans were virtually represented in the law-making body. The Americans, however, had already denied the identity of interest with the mother country implicit in the doctrine of virtual representation and demanded a more direct means of providing their consent to the laws which threatened their property and liberty. When American protests and requests for a just redress of their grievances prompted the British rulers ultimately to

assert their authority more emphatically, the colonists chose to separate themselves from Britain, and explained the causes which impelled them to the separation in the Declaration of Independence.

Having justified their Revolution with Enlightenment political theory, the leaders of the new American nation had an unprecedented opportunity to put principles into action, to restructure the major social institutions to accommodate their new ideology. This restructuring had potentially profound implications for many in the society, including women. Certainly the Revolutionary ideas challenged conventional American values and practices regarding the status of women. The subordinate position of women in all the major social institutions, and their dependent and inferior legal status, clashed with the idea of human beings born free and equal in regard to certain inalienable rights. The emphasis in Enlightenment thought on human reason and its strength contradicted the prevailing beliefs regarding women's intellectual inferiority and made their vastly inferior education indefensible. The individualism of the natural rights doctrine contrasted with the general perception that a woman was always to be dependent and have her identity submerged in that of a husband. Moreover, the denial of the right to participate in the political process was contrary to the doctrine of government by the consent of the governed.

That the Revolution prompted some discussion of woman's place in American society is quite clear. Students at Yale University, for example, debated the topic "Whether women ought to be admitted into the magistracy and government of empires and republics." Some of the Revolutionary leaders, including Thomas Paine, James Wilson, and William White, criticized the subordination of women in American society and denied the doctrine of female inferiority on which it was based. Hannah Lee Hall, a member of the prominent Lee family of Virginia, boldly asserted that women deserved equal political rights with men and even persuaded her brother, Richard Henry Lee, that women should vote, albeit only unmarried women of property. It is unclear whether he actually tried to act on his conviction.

Another advocate of greater rights for women was Judith Sargent Murray, a poet and playwright. She wrote the only avowedly feminist essay published during the Revolution. Entitled "On the Equality of the Sexes," it appeared in the *Massachusetts Magazine* in 1790, although it was reportedly written several years earlier. In it she made a strong case for the intellectual equality of women with men and advocated equal educational opportunities for women, a goal which she shared with Abigail Adams. In response to the idea that women's domestic duties should be sufficient to provide fulfillment, Murray wrote:

I would calmly ask, is it reasonable, that a candidate for immortality, for the joys of heaven, an intelligent being, who is to spend an eternity in contemplating the works of Deity, should at present be so degraded, as to be allowed no other ideas, than those which are suggested by the mechanism of a pudding, or the sewing of the seams of a garment?[7]

The most famous and oft-quoted advocate of rights for women at this time was, of course, Abigail Adams. Her opinions are recorded in her letters to her husband. In one famous exchange she wrote:

. . . in the new Code of Laws which I suppose it will be necessary for you to make I desire you would remember the Ladies, and be more generous and favourable to them than your ancestors. Do not put such unlimited power into the hands of the husbands. Remember all men would be tyrants if they could. If particular care and attention is not paid to the Ladies we are determined to foment a rebellion, and will not hold ourselves bound by any laws in which we have no voice or representation.[8]

John Adams responded:

Depend upon it, we know better than to repeal our masculine systems. Although they are in full force, you know they are little more than theory. We dare not exert our power in its full latitude. We are obliged to go fair, and softly, and in practice you know we are the subjects. We have only the name of masters, and rather than give up this, which would completely subject us to the despotism of the petticoat, I hope General Washington, and all our brave heroes would fight.[9]

John Adams' colleagues within the Revolutionary elite shared his conventional attitude, including his aversion to a wider political role for women. Thomas Jefferson, for example, disapproved of the inclusion of women in the political and intellectual discussions which he witnessed in Paris and contrasted French women to American women in a letter to a Mrs. Bingham in 1788, commenting that:

. . . our good ladies, I trust, have been too wise to wrinkle their foreheads with politics. They are contented to soothe and calm the minds of their husbands returning ruffled from political debate. They have the good sense to value domestic happiness above all others.[10]

Benjamin Franklin expressed very similar sentiments in a letter to his wife in 1758:

You are very prudent not to engage in party disputes. Women never should meddle with them except in endeavors to reconcile their husbands, brothers,

and friends, who happen to be of contrary sides. If your sex can keep cool, you may be a means of cooling ours the sooner, and restoring more speedily that social harmony among fellow citizens that is so desirable after long and bitter dissension.[11]

Despite their rejection of the ideal of virtual representation for the colonies, the Revolutionary leaders were quite willing to accept it for women, and others, in the new political order they were creating.

Given the social conservatism of the leaders of the Revolution when it came to the issue of women's rights, it is not surprising that the Revolution prompted very little improvement in the status of women. Although a few more schools to educate the daughters of the elite were established, these remained basically finishing schools and had no significant impact on the general condition of women's education. The legal status of women also was little altered. Some states liberalized their divorce laws, although this was not part of a large-scale movement. The property rights of women remained largely unchanged as well. As for political rights, the only significant change was a short-lived experiment with woman suffrage in the state of New Jersey.

Despite the failure of the Revolutionary generation to alter significantly the status of women, the ideals of the Revolution provided later generations of Americans with a legacy that could be utilized to promote such changes. Because the Declaration of Independence proclaimed the right of every person to life, liberty, and the pursuit of happiness, it provided a rallying point for all who were denied equal rights in the new political order. The doctrine of government by the consent of the governed fostered a concern for widening the participatory role of citizens within the republic. The disparity between the professed ideals of the Revolution and the social conservatism that facilitated the continued denial of equal rights to many Americans, including women, blacks, and other minorities, created a dissonance within the American value system conducive to social conflict as these groups attempted to claim their Revolutionary heritage.

Reform, Women, and Suffrage

The first such attempts occurred during the Jacksonian period in the early nineteenth century when many Americans refocused their attention on the ideals of the Revolution and their implementation. The sources of Jacksonian reform efforts were many and varied, but the national values proclaimed in the Declaration of Independence offered

essential justification for reform. With its emphasis on equal political rights, equal opportunities to succeed economically, and the ability of the common man to understand and mold his government and society, the egalitarian spirit of the Jacksonian era fostered the growth of a variety of reform movements dedicated to increasing human freedom and improving the material conditions of life. This reform impulse was unique in its size and scope and in one other significant aspect—for the first time women actively engaged in activities in the public sphere as they joined the ranks of the reformers in large numbers.

That they should do so seemed perfectly logical and appropriate to these women. Certain religious and charitable work had always been delegated to women because their womanhood was thought to imply superior piety, altruism, and sympathy for the less fortunate. They had traditionally been expected to care for the sick, to provide for the needs of the poor, and to give freely of their time for church activities. The Jacksonian reform impulse was firmly rooted in the religious revivalism of the time, reflecting its emphasis on the conversion of unbelievers, the elimination of ungodly behavior in anticipation of the millennium, and sympathy for the victims of poverty, crime, and injustice. When the churches sought to extend their influence beyond their parishioners into the broader society, many women believed strongly that the change meant that woman's sphere must be appropriately enlarged so that she could continue in activities traditionally associated with "church work."

With this in mind, women organized themselves into societies to eliminate or moderate the use of alcoholic beverages, to suppress vice, to encourage the observance of the Sabbath, to eradicate slavery, and to accomplish a variety of other goals they considered desirable for society. Instead of the approbation that charitable activities had usually promoted, the women reformers met with scorn, disapproval, and hostility. The more active and public a woman reformer was, the more controversy she generated.

The critics of women reformers complained that the women were engaging in a variety of activities inappropriate for them; that they left their homes unescorted to obtain signatures on petitions; that they were speaking in public, expressing opinions on political issues. These violations of convention triggered as much controversy within the various reform movements as outside of them. Many organizations, especially those with large numbers of women participating, such as those concerned with temperance and abolition, split over the issue of women's participation. The result, in several cases, was the formation of separate women's groups. In New York, for example, women were allowed to attend meetings of the Sons of Temperance, but not to speak at them.

As a result, women withdrew and formed the Woman's State Temperance Society.

The controversy generated by the action of the women reformers indicated the extent to which women were accorded a subordinate status within the political system and the general unwillingness of most Americans, including even some radical abolitionists, to extend the principles of self-government to women. The criticism of their reform activities prompted some of the women to defend their actions and take an avowedly feminist stance on the question of women's status within the churches and reform organizations and within the larger society. Among the earliest to do so were Angelina and Sarah Grimké, sisters from a patrician South Carolina family who left the South because their religious and moral beliefs could not be reconciled with the institution of slavery. Although their response to their critics was often based on religious beliefs and interpretations, as in Sarah Grimké's *Letters on the Equality of the Sexes,* the secular tradition of the American Revolution also contributed to their feminist thought. Angelina Grimké, for example, wrote in 1836 in her *Letters to Catherine Beecher* that:

> I believe it is woman's right to have a voice in all the laws and regulations by which she is to be *governed,* whether in Church or State; and that the present arrangements of society on these points, are *a violation of human rights, a rank usurpation of power,* a violent seizure and confiscation of what is sacredly and inalienably hers. . . .[12]

When she spoke before the Massachusetts state legislature in 1838, she asked those who opposed political activism by women the following questions:

> Are we aliens, because we are women? Are we bereft of citizenship because we are mothers, wives, and daughters of a mighty people? Have women no country—no interests staked in public weal—no liabilities in common peril —no partnership in a nation's guilt and shame?[13]

Although other women reformers followed the Grimkés' example in speaking out individually in support of women's rights, an organized feminist movement was not begun until more than a decade after their pioneering efforts when Elizabeth Cady Stanton and Lucretia Mott called a meeting in Seneca Falls, New York, in July, 1848, for the purpose of discussing the problem of the status of women. As did the Founding Fathers, the organizers of this convention perceived the historic importance of their undertaking and the need to explain the reasons for their actions. They decided to draft a "Declaration of Sentiments" and

modelled it directly on the Declaration of Independence, indicating the importance of the tradition of the American Revolution to the nascent feminist movement.

In their "Declaration of Sentiments" the feminists asserted that "all men and women are created equal." Substituting "man" for King George III, the feminists listed 18 grievances against "him." Significantly, the first two of these were that:

> He has never permitted her to exercise her inalienable right to the elective franchise.
> He has compelled her to submit to laws, in the formation of which she had no voice.[14]

But the grievances of the feminists went far beyond their political subordination; they decried also the laws and customs which deprived them of educational and occupational opportunities, subordinated them to their husbands, decreed different moral standards for men and women, and limited the role of women within the churches. Because they envisioned sweeping changes in all human relationships and social institutions, including especially the family, the feminists created a document that was, in fact, much more radical than the original on which it was based.

Somewhat surprisingly, the only resolution adopted at the Seneca Falls convention which generated any controversy during discussions was that demanding that women be enfranchised. To many of the convention participants it seemed the most radical of all the proposals and the most likely to cause opposition to their movement and thus jeopardize their other demands. After speeches by Stanton and by Frederick Douglass, who pointed out the importance of the vote in securing their other goals, the resolution was passed. Although suffrage remained only one plank in the nineteenth-century feminist platform, its significance to the movement grew in the succeeding years as many feminists became convinced that its passage could be accomplished.

The Seneca Falls convention spawned a series of subsequent meetings organized to further the cause of women's rights, including one in Rochester, New York, held also in 1848. Among those who attended the Rochester meeting and signed its resolutions were Daniel Anthony, his wife, and their daughter, Mary. Their actions were significant because they were to mark the first contact with the nascent feminist movement for another daughter, Susan Brownell Anthony. Although she was later to become a single-minded and indefatigable leader in the cause of women's rights, Anthony's initial reaction to feminist goals was reserved. As a pacifist Quaker, she had little sympathy for the demand

for suffrage because she believed that one should not vote in, or otherwise support, a government which waged war. Moreover, she was at that time very involved in temperance work and saw no need to embrace another cause.

In many ways Anthony's evolution into a feminist mirrored the experiences of other women of her time. She was born on February 15, 1820, near Adams, Massachusetts, into a middle-class home and was raised in her father's Quaker faith. She received the best education available to a woman at that time, studying at the Friends' Seminary in Philadelphia. Because it was the only profession open to women, Anthony became a teacher and advanced to the position of head of the Female Department at the Canajoharie Academy in upstate New York. Influenced by her father's example, she became involved in temperance and abolitionist activities, where she encountered the prejudice against women common in reform circles. Although this was important in her development as a feminist, her introduction to Elizabeth Cady Stanton, in 1851, was probably even more crucial. From the beginning the two women forged a deep and lasting friendship and an effective working partnership in the women's rights movement.

Although she continued to work primarily for temperance in the early 1850s, Anthony's introduction to feminist thought informed her other reform work and became her dominant concern by the end of the decade. Within the temperance movement she provided a strong voice for an equal participatory role for women and led the walkout by women at the 1852 convention of the New York Sons of Temperance. In that same year she also spoke out at a state teachers' convention in behalf of equality for women in the teaching profession. Her request to speak before the group was unprecedented and was allowed only after extended debate and a close vote in her favor by the men present. By 1854 Anthony was devoting her time to a petition campaign to secure for women the right to their earnings, to their children in the event of a divorce, and to vote. Her organizational abilities contributed significantly to the growing numbers and influence of the feminist movement of the 1850s.

The Civil War created both promise and perplexity for the American women's rights movement. As is always the case with war, it created the dilemma of whether to continue active work for reform causes or to put aside such considerations in favor of total support for the war effort. Many feminists chose the latter course, curtailing their women's rights activities and giving of their time to the U. S. Sanitary Commission and other such organizations. But for some feminists, including Anthony and Stanton, it was not possible to completely abandon ac-

tivism for bandage rolling. In 1863 they helped found the Women's National Loyal League in order to ensure that the war brought freedom to the slaves and to promote the principles of democratic government. Once the North had won the war, the former goal was rapidly accomplished as the Thirteenth Amendment was ratified by December, 1865. The institutionalization of democratic principles, both for the newly freed blacks and for women, was not to be so easily accomplished, however.

Having tied their cause closely to that of the slave, both before and during the war, many feminists assumed that the granting of suffrage to the freed blacks would be accompanied by its extension to women as well. For that reason the introduction of the Fourteenth Amendment extending the vote to all *male* citizens created alarm among feminists and caused a division in their ranks as to the appropriate response to the situation. Anthony and Stanton promptly organized a petition campaign against the introduction of the word "male" into the Constitution. Despite their efforts, their traditional supporters in abolitionist and Republican ranks persisted in their endorsement of the amendment as worded, contending that the enfranchisement of black men was politically possible, whereas the inclusion of woman suffrage in the effort would only alienate advocates of black suffrage and cause the defeat of both causes.

While their former supporters in Congress settled for what was politically expedient, the women argued the justice of their cause. Elizabeth Cady Stanton, for example, noted that "the same logic and justice that secures suffrage to one class gives it to all. The struggle of the last thirty years has not been merely on the black man as such, but on the broader ground of his humanity."[15] In a memorial to Congress in 1866 the National Woman's Rights Convention observed that:

> We propose no new theories. We simply ask that you secure to ALL the practical application of the immutable principles of our government, without distinction of race, color or sex. And we urge our demand *now*, because you have the opportunity and the power to take this onward step in legislation. The nations of the earth stand watching and waiting to see if our Revolutionary idea, "all men are created equal," can be realized in government.[16]

Her pleas were to no avail, however, as the Fourteenth Amendment was passed. Its passage was a blow to the feminist cause, further institutionalizing the political subordination of women and dividing the feminist ranks. Not all pioneers in the women's rights movement agreed with the uncompromising stance taken by Anthony and others. Lucy

Stone, for example, supported the amendment, commenting, "I will be thankful in my soul if anybody can get out of the terrible pit."[17] As a result of this and other disagreements, separate suffrage organizations were formed in 1869. The National Woman Suffrage Association, organized first by Stanton, Anthony, and their followers, adopted a radical stance on a variety of issues of concern to women, including marriage, divorce, and theology. In contrast, the American Woman Suffrage Association, led by Stone, decided to concentrate its efforts on winning suffrage for women and to avoid alienating support for the vote by espousing other controversial issues. Fed by ideological differences and personal antagonisms, the split persisted until 1890.

Although it was only one of many goals important to the NWSA, suffrage remained a vital concern to Anthony and her supporters. The organization at first sought to gain suffrage through Congressional action, supporting the introduction of bills granting women the vote in the District of Columbia and the territories and the introduction of a federal woman suffrage amendment. In their efforts on behalf of these measures, the women constantly returned to the theme of suffrage as a fundamental right of democratic citizenship. In the first NWSA convention Stanton pointed out that this theme had been important in suffrage arguments from the beginning of the movement. Answering the criticism that they had been making the same speeches for twenty years, Stanton observed that their arguments were:

> . . . the same our fathers used when battling old King George and the British Parliament for their right to representation, and a voice in the laws by which they were governed. There are no new arguments to be made on human rights, our work to-day is to apply to ourselves those so familiar to all; to teach man that woman is not an anomalous being, outside all laws and constitutions, but one whose rights are to be established by the same process of reason as that by which he demands his own.[18]

Congress, however, was as unwilling to consider the enfranchisement of women as a separate issue as it had been to include it in the Fourteenth Amendment and defeated all attempts to extend the vote to women.

Having failed to obtain their goal by legislative means, the NWSA announced in 1872 the "new departure" for suffrage activities. It was based on a constitutional theory first propounded by Francis Minor, a pro-suffrage attorney from St. Louis, at the 1869 NWSA convention. Briefly summarized, the Minor theory held that the Fourteenth Amendment had actually given to women constitutional guarantees of their right to vote, rather than explicitly denying it to them as had been pre-

viously thought. Because the amendment had defined citizenship to include all persons born or naturalized in the United States and had forbidden states to "make or enforce any law which shall abridge the privileges and immunities of citizens," Minor reasoned that women should be able to vote because they were citizens and that suffrage was a privilege of citizenship. Moreover, he claimed that the denial of the vote to women violated the constitutional requirement that each state provide its citizens a republican form of government.

In order to test the Minor theory, feminists began attempting to vote in local elections as early as 1870, and in 1872 the NWSA urged women to claim their constitutional right by attempting to register and vote in the state and other elections. In addition, the organization called upon Congress to pass a declaratory act affirming that women could vote under the Constitution. Although supported by the leaders of the organization in appearances before Congress, the latter tactic assumed less importance for the suffragists, who were by that time relying primarily on the courts to grant them the right to vote. Having consistently adopted the position that the denial of suffrage to women constituted a direct abridgement of their natural rights, the suffragists were finally turning to the judiciary as the fundamental protector of those rights in order to seek a redress of their grievances.

Although their constitutional argument provided the legal underpinnings for their actions, the suffragists approached the proceedings in the hopes that the courts would declare, in the words of suffrage attorney Francis Miller, "that the Declaration of Independence has been enacted into law, and that you will see that that law is enforced."[19] He expressed this hope in one of the first cases to reach the courts under the "new departure" of the NWSA, a civil suit brought by seventy women who were denied the right to register and vote in the District of Columbia in 1871. In addition to providing a detailed defense of the proposition that the Fourteenth Amendment had actually conferred suffrage on all citizens, attorneys Miller and Albert Riddle also spent much time arguing that the right to vote is a corollary to the right of self-government and thus is a natural right antecedent to all governments.

In contrast to the natural rights argument used by the plaintiffs, the court responded that the determination of voting qualifications was within the power of state governments, adding that:

> . . . we do not hesitate to believe that the legal vindication of the natural right of all citizens to vote would, at this stage of popular intelligence, involve the destruction of civil government.

This condition demonstrates that the right to vote ought not to be, and is not, an absolute right. The fact that the practical working of the assumed right would be destructive of civilization is decisive that the right does not exist. . . .[20]

In its decision, the court referred to the practice of allowing all men in the large cities to vote, contending that it caused "political profligacy and violence verging upon anarchy" with the result that "men of conscience and capacity are discarded, to the promotion of vagabonds to power."[21] These remarks indicate to us the extent to which the democratic faith of the Revolution had eroded by the late nineteenth century, in part because of the problems created by large-scale immigration and urbanization. To women interested in gaining suffrage, however, commentary on how men behaved at polling places was not the issue. Undaunted by the setback, the NWSA continued urging women to vote, and Susan B. Anthony, in the best tradition of leadership, concluded that the time had come to apply in practice the principles she was asserting.

Case Study: The Trial of Susan B. Anthony

The most notorious case to come from the "new departure" began when Susan B. Anthony opened her morning paper at her home in Rochester, New York, on November 1, 1872, and read the following:

Now Register? To-day and to-morrow are the only remaining opportunities. If you were not permitted to vote, you would fight for the right, undergo all privations for it, face death for it. You have it now at the cost of five minutes' time to be spent in seeking your place of registration, and having your name entered. And yet, on election day, less than a week hence, hundreds of you are likely to lose your vote because you have not thought it worth while to give the five minutes. To-day and to-morrow are your only opportunities. Register now![22]

After persuading her sister to join her, Anthony proceeded to the Eighth Ward Registration Office and tried to register. In order to persuade the officials of the legality of her actions, she cited sections of the New York and United States constitutions, including the Fourteenth Amendment. Unprepared for such a confrontation and possibly sympathetic to woman suffrage, the Republican officials were inclined to allow the women to register. The Democratic registrar, however, refused to cooperate, after the U.S. Supervisor of Elections advised him that he

would be liable for prosecution under the U.S. Enforcement Act of 1870.

Having lost the first skirmish, Anthony and her sister left the office only to return later in the day with 14 other women. After Anthony promised to pay for any legal costs which might be incurred by the registrars, they agreed to allow the women to register for the coming election. Similar scenes were enacted elsewhere in the city of Rochester as 34 other women sought to register, but the election officials in the other wards remained steadfast in their refusal to sanction voting by women. When the day of the election arrived, the 16 women registered in the Eighth Ward appeared at the polls and cast their ballots. Later in the day Anthony sent a letter to Elizabeth Cady Stanton, describing the momentous occasion. She wrote:

> Well, I have been and gone and done it! positively voted the Republican ticket—straight—this A.M. at seven o'clock, and swore my vote in, at that. . . . So we are in for a fine agitation in Rochester on this question.[23]

Indeed the agitation had hardly begun. The *Rochester Union and Advertiser*, a Democratic publication, editorialized against the actions of the women, contending that the lawlessness of their deeds proved women unfit for the ballot. The local Republican press responded with a staunch defense of Anthony and the right of women to vote. The issue was not to be tried in the press, however, and the state and federal authorities had to determine what to do about the incident. For reasons which remain unclear; it was decided to charge the women with violation of the federal Enforcement Act of 1870 rather than to try them under state laws. The situation was ironic in that the women, most of whom were radical Republicans, were being prosecuted under a law which had been passed under the Radical Reconstruction program to prevent illegal voting by southern rebels and to outlaw intimidation of black voters.

On November 28, 1872, Thanksgiving Day, Anthony and the other women were summoned to the office of U.S. Commissioner William Storrs. When they refused to go, marshals were dispatched to get them. The ensuing arrests were handled with a degree of decorum highly unusual in law enforcement circles. Anthony's summons was served by Marshal Keeney, who appeared at her door quite fashionably attired and engaged her in small talk until she demanded to know the reason for his visit. He produced the warrant for her arrest and escorted her to the court building. She was joined there by the other defendants and they waited for several hours, after which they were told that the assist-

ant district attorney had not arrived to question them and so they had to return the next day.

They did so, entering pleas of "not guilty" to the charges against them. Bail was set at $500 for each of them, but Anthony refused to pay it. Her lawyer, Henry Selden, defied her wishes in this regard and posted the bail. When she reprimanded him for this, he replied, "I could not see a lady go to jail."[24] His chivalry was to prove costly, however, as it would ultimately cost her the basis for an appeal to a higher court. In January, 1873, the grand jury brought indictments against Anthony and the other women voters and against the three election inspectors. The indictment against Anthony charged that she had voted in a Congressional election without the legal right to do so because:

> . . . (the said Susan B. Anthony being then and there a person of female sex), as she, the said Susan B. Anthony then and there well knew, contrary to the form of the statute of the United States of America in such case made and provided, and against the peace of the United States of America and their dignity.[25]

Despite her indictment, Anthony continued the suffrage travels and lectures made even more imperative now that she had to raise money to pay the legal expenses related to the trials. Every time she left town, Marshal Keeney saw her off at the train station, as he attempted, always to no avail, to dissuade her from leaving because the conditions of her bail prohibited her leaving the county. She further demonstrated her contempt for the proceedings against her by voting once more in the city elections of March 4, 1873. The indicted election inspectors had wanted all 16 women who had voted in November, 1872, to do so again, but only two others joined Anthony, the rest having been intimidated by the prospect of further legal action against them.

As the May 12th trial date drew closer, Anthony resorted to a most extraordinary tactic to ensure a verdict of "not guilty." She launched a series of lectures in Rochester and the rest of Monroe County on the topic "Is it a crime for a United States citizen to vote?" In so doing she was deliberately attempting to so influence the prospective jurors in her case that a guilty verdict would be impossible to secure. Needless to say, her actions angered District Attorney Richard Crowley, who pointed out that she was undermining the impartiality of trial by jury; he threatened to have the trial site changed. Anthony retorted that she was only reading and explaining the Constitution to her audiences. Crowley, however, fully understood the real intent of her actions and believed that her lectures had actually converted many of the local residents to her point of view. For that reason he appealed for a change

of venue and it was granted; the trial site was moved to neighboring Canandaigua in Ontario County. With only three weeks left before her new trial date, Anthony immediately began a whirlwind lecture tour of Ontario County with the aid of her friend, Matilda Joslyn Gage.

Newspaper reaction to Anthony's lectures ranged from amused approbation to outrage. The *New York Commercial Advertiser* commented as follows:

> It is a regular St. Anthony's dance she leads the District Attorney; and in spite of winter cold or summer heat, she will carry her case from county to county precisely as fast as the venue is changed. One must rise very early in the morning to get the start of this active apostle of the sisterhood.[26]

The *Auburn Bulletin* agreed, adding that "again we say, she ought to vote."[27] In contrast, the *Rochester Union and Advertiser* found nothing amusing about Anthony's insistence on delivering woman suffrage lectures in order to influence the jury, stating that "it is nothing more nor less than an attempt to corrupt the source of that justice, under law, which flows from trial by jury."[28]

Whatever the legal or moral implications of Anthony's tactics, they illustrated a deep dilemma facing suffrage advocates at the time. The suffragists had relied on lecturing and lobbying as the mainstays of their political efforts to secure the vote for women, but had failed to make much progress toward their goal. As a result, they decided to take their contention that their natural rights were being denied to the courts, where supposedly a dispassionate hearing on the constitutional and legal principles involved could be secured. Yet by her actions Anthony was making the trial a political one. Although it is doubtful that the courts themselves could be impervious to the political and social controversy surrounding the issue of woman suffrage, as the court decision in the District of Columbia demonstrated, Anthony was not helping the situation by her actions.

Moreover, it is not clear that a verdict of "not guilty" would best serve the interests of the suffrage cause. At best, it would only secure voting privileges for women in Monroe County and, at that, those privileges would be dependent on convincing the election officials in each ward, including the Democrats, to register them and accept their ballots. Because a "not guilty" verdict would prevent an appeal to a higher court, all provisions of federal and state constitutions and statutes disfranchising women would remain on the books. A climate of opinion sufficiently favorable to voting by women to prevent prosecutions under those laws would also be conducive to the repeal of the laws and the

establishment of woman suffrage through established political channels.

But whatever the drawbacks to Anthony's approach, it is clear that she was too much of an activist to sit on the sidelines while her fate and that of her cause hung in the balance. She had to make it clear that it was the law and not Susan B. Anthony that was on trial. In order to do so, she and Gage barnstormed Ontario County, making 37 speeches in 20 days. In those speeches Anthony returned again and again to the natural rights argument and the historical precedents established in its favor in the Revolutionary period. After asserting that governments are established by the consent of the governed to protect their inalienable rights, she asked, "How can 'the consent of the governed' be given, if the right to vote be denied?"[29] After citing Benjamin Franklin, Thomas Paine, and other Revolutionary leaders in support of her position, Anthony asserted that:

> . . . the entire womanhood of the nation is in a "condition of servitude" as surely as were our revolutionary fathers, when they rebelled against old King George. Women are taxed without representation, governed without their consent, tried, convicted, and punished without a jury of their peers. And is all this tyranny any less humiliating and degrading to women under our democratic-republican government to-day than it was to men under their aristocratic, monarchical government one hundred years ago? There is not an utterance of old John Adams, John Hancock, or Patrick Henry, but finds a living response in the soul of every intelligent, patriotic woman of the nation. Bring to me a common-sense woman property holder, and I will show you one whose soul is fired with all the indignation of 1776, every time the tax-gatherer presents himself at her door.[30]

On June 18, 1873, the tolling of the courthouse bell in Canandaigua signalled the beginning of proceedings against Susan B. Anthony. Confident that she would soon be vindicated, Anthony entered the courthouse, accompanied by her lawyers, Henry Selden and John Van Voorhis, and several friends. In addition to several of the other women voters, the trial had attracted a large number of people from the surrounding area, including ex-President Millard Fillmore.

District Attorney Crowley made his opening remarks, emphasizing that the facts of the situation were not in dispute and, that so far as the prosecution was concerned, the law was equally clear. He called as witnesses those election officials who had registered Anthony as a voter and accepted her ballots, documenting that Anthony had indeed voted. Then, in his concluding remarks, he cited the New York state laws and constitutional provisions prohibiting women from voting and the federal Enforcement Act of 1870, which provided criminal penalties

for anyone who voted without the legal right to do so. He further contended that voting qualifications were under the proper authority of the states to regulate and that the defense's assertion that the Fourteenth Amendment superseded the states' rights in these matters was wrong because voting was not a privilege or immunity of United States citizenship, but rather of state citizenship.

In contrast to the brevity and simplicity of the prosecution's case, the presentation of the defense was hampered by the court's refusal to allow Anthony to testify in her own behalf and was quite complex, involving the use of many constitutional precedents in order to buttress the seemingly novel constitutional interpretation which provided the foundation of the defense. The dubious ruling by Judge Ward Hunt that Anthony was not competent to act as a witness in her own behalf, apparently because she was a woman, was made even more questionable when he allowed the prosecution to call Assistant District Attorney John Pound as a witness in order to enter into the record the testimony given by Anthony when she appeared before the grand jury in January. The defense contention that Anthony should not be convicted because she had thought that she had the legal right to vote when she had done so, indicating a lack of criminal intent, was thus undermined to some extent by the court's denial of her right to testify. As a result the only witness in Anthony's behalf was her attorney, Henry Selden, who stated that she had asked his advice prior to voting and that he had told her that she had a legal right to do so.

In his concluding remarks Selden relied heavily on the idea that the right to vote was a privilege of citizenship essential to democratic government and protected by the Fourteenth Amendment. He began by pointing out that "the only alleged ground of illegality of the defendant's vote is that she is a woman" and that "the crime, therefore, consists not in the act done, but in the simple fact that the person doing it was a woman and not a man."[31] The absurdity of the situation, he claimed, was exacerbated by the fact that women had no voice in the creation of the laws which punished them for behavior considered admirable in a man. This situation, according to Selden, violated the principles of government by the consent of the governed "upon which our Government is founded, and which lie at the basis of all just government. . . ."[32]

After giving an impassioned plea in favor of woman suffrage as a just and wise measure, Selden concluded his remarks with the constitutional argument that state laws or constitutions could not deny women the right to vote because suffrage was one of the privileges and immunities of United States citizenship protected by the Fourteenth Amendment. In the opinion of Selden, to exclude it from the other con-

stitutional guarantees of life, liberty, and property made no sense because "the possession of this voice, in the making and administration of the laws . . . is what gives security and value to the other rights. . . ."[33]

Selden's oratory was to no avail, however. After the prosecution had addressed its final remarks to the court, Judge Hunt read from a statement he had prepared ahead of time explaining his conclusions regarding the legal issues involved. Citing various legal precedents, Hunt concluded that voting was a right or privilege of state, not United States, citizenship and thus was not protected by the Fourteenth Amendment. As a result, he stated, Anthony had voted although she had no right to and thus had to face the penalties prescribed by law. He consequently ordered the jury to find a verdict of "guilty." When Selden objected that the question of Anthony's guilt was for the jury to decide and asked that the jury be polled, Hunt dismissed the jury without ascertaining its decision. The next day Selden asked for a new trial on the grounds that Anthony had been denied her constitutional right to trial by jury and that the court's decision that she had no lawful right to vote was erroneous. Not surprisingly, Hunt denied his motion.

Before he pronounced sentence, Judge Hunt asked Anthony if she had anything to say. Having sat mute throughout the trial, Anthony had a great deal indeed that she wanted to say. Now that she had been given the opportunity, she lashed out at the court's decision and the political system which had denied her an equal voice in her government. She said to the judge,

> . . . for in your ordered verdict of guilty, you have trampled underfoot every vital principle of our government. My natural rights, my civil rights, my political rights, are all alike ignored. Robbed of the fundamental privilege of citizenship, I am degraded from the status of a citizen to that of a subject; and not only myself individually, but all of my sex, are, by your honor's verdict, doomed to political subjection under this so-called Republican government.[34]

Despite several attempts by the judge to silence her, she continued her indictment of the system which had made her a convicted felon. When Hunt insisted that her trial had been conducted "according to the established forms of law,"[35] she responded that those forms of law were:

> . . . all made by men, interpreted by men, administered by men, in favor of men, and against women. . . . Women, to get their right to a voice in this Government, [must] Take it; and I have taken mine, and mean to take it at every possible opportunity.[36]

After he had succeeded in ending the defendant's speech, Hunt sentenced her to a fine of $100 plus court costs. When she vowed she would not pay a penny of the fine, Hunt refused to have her jailed pending payment of the fine. As a result, Anthony had no grounds for an appeal of the decision despite the many irregularities in the trial proceedings.

Judge Hunt's decision and his questionable handling of the case provoked outraged opposition from both supporters and critics of woman suffrage. Anthony called the trial "a mere farce" and labelled Hunt's conduct "the greatest outrage."[37] Henry Selden called the decision "iniquitous," adding that Hunt "had as much right to order me hung to the nearest tree, as to take the case from the jury and render the decision he did."[38] The author of an anonymous letter to the editor of the *St. Louis Globe* agreed, commenting, "I have been pained to witness, on the part of some of our newspapers, a disposition to treat this decision with indifference, by some even with levity. Has it come to this, that because she is a woman the defendant can not get a fair and impartial trial?"[39] Some critics objected to the prosecution of a person whose qualifications for voting had been certified by the appropriate election officials. The *Philadelphia Age*, for example, editorialized that there had not been "a case of more gross injustice ever practiced under forms of law, than the conviction of that lady for a criminal offense in voting, with the assent of the legal election officers to whom her right was submitted."[40] Others questioned how the judge could consistently contend that the regulation of suffrage was a state matter while convicting Anthony under a federal statute. The *Washington Star* asked in response to Hunt's decision, "If his views are to prevail, of what effect are the suffrage amendments to the Federal Constitution?"[41]

The conviction of Anthony for voting did not entirely settle the controversy. Charges against the other women voters were dropped after Anthony's trial, but the election officials who had allowed her to vote still faced prosecution. In contrast to the treatment accorded Anthony at her trial, the inspectors were allowed to testify in their own behalf and Anthony herself was also called as a witness. Why Judge Hunt found her competent to testify at the others' trial and not at her own remains unexplained. When Hunt gave his instructions to the jury in the later trial, he gave them almost as little discretion regarding their decision as he had in Anthony's case. He repeated his earlier conclusion that the women had had no legal right to vote and stated that the election officials were equally wrong in accepting their ballots. As a result, according to Hunt, the jury had no decision but to render a verdict of "guilty." When defense counsel, John Van Voorhis, asked why the issue

should even go to the jury, Hunt responded, "As a matter of form."[42] The jury brought in the recommended verdict, and Hunt fined the three inspectors $25 each and court costs. They refused to pay and, after several months delay, were imprisoned for their failure to comply with the sentence. Within a week, however, they were pardoned by President Ulysses Grant.

Although Anthony was denied her opportunity to take the issue of woman suffrage to the U.S. Supreme Court, a related case did reach the nation's highest tribunal in 1874. It also began in the 1872 elections when Virginia Minor, a woman suffrage advocate and the wife of the attorney who first contended that the Fourteenth Amendment had granted women the vote, attempted to register to vote in St. Louis, Missouri. When the election officials refused to include her name among those eligible to vote because only males could legally vote in the state of Missouri, she sued Reese Happersett, the registration official, for $10,000 in damages. After decisions in favor of the defendant in the St. Louis Circuit Court and the Missouri Supreme Court, the case reached the U.S. Supreme Court in October, 1874. Not surprisingly, the arguments by the plaintiffs in the case closely paralleled those made by the defense at the Anthony trial. Unfortunately for the cause of woman suffrage, the decisions in the two cases were remarkably similar as well.

Briefly summarized, the high court decided that suffrage was not a privilege of United States citizenship, that voting requirements were traditionally and legally left to the state to determine, and that the denial of suffrage to women was consequently consistent with long-established practice and the express provisions of the Constitution, including that which required that every state establish a republican government. On the latter point, the court claimed that the Founding Fathers' acceptance of state constitutions which disfranchised women indicated that they did not consider universal suffrage a prerequisite for a republican government. The court's finding that "the United States has no voters in the States of its own creation"[43] was particularly interesting in the light of the fact that black males had been enfranchised through the Fourteenth and Fifteenth Amendments and that Anthony had been convicted for violating a federal statute regulating voting practices.

The Supreme Court decision in the Minor case marked the end of attempts to gain voting rights for women through the courts. The "new departure" of the NWSA had represented the high point in the development of the advocacy of suffrage as an inalienable individual right belonging to women as well as to men. When the courts rejected the

feminists' argument that suffrage was an essential right of citizenship, they blunted the effectiveness of the argument from justice which had been such an important part of the feminist ideology up to that point. If the judicial system, which was supposed to safeguard fundamental rights, failed to recognize the claims of women to political and legal equality as citizens of a republic, then such claims would be even less credible elsewhere.

Thereafter feminist efforts centered on political activities designed to persuade the American public and its lawmakers to expand the rights and opportunities of women. The arguments used by feminists to convince Americans to grant women the vote relied more and more on the social utility of doing so rather than on the natural rights principles which had been such an important feature of earlier feminist speeches. Having abandoned to some extent the argument from justice, some suffrage advocates, including Carrie Chapman Catt, even went so far as to play on the nativist fears of many Americans by pointing out that white middle-class women voters would increase the preponderance of votes against immigrants. Moreover, many suffragists increasingly emphasized the ostensible differences between men and women as a reason for giving women the vote. They claimed that women's superior morality, altruism, and public spirit would purify the political process of the corruption, immorality, and inefficiency that had characterized male rule.

Despite the setback in the courts occasioned by the Anthony case, and by its own disorganization, the woman suffrage movement experienced some successes in the post-Civil War years. As early as 1869 the territorial legislature of Wyoming granted the vote to women, followed by Utah in 1870, Colorado in 1893, and Idaho in 1895. Considering the amount of time and effort expended by the supporters of woman suffrage throughout countless referenda campaigns in the last decades of the nineteenth century, these successes in the West were minimal indeed. It took a successful alliance with the Progressive movement, which emphasized the need for increasing popular participation in government, to bring the final victory to the suffrage movement.

In its alliance with Progressive reformers, the woman suffrage movement found that its new appeal emphasizing the expediency of granting women the vote (women voters would aid in reforming society), and minimizing the feminist threat involved in suffrage, worked to increase the membership in the National American Woman Suffrage Association and to attract popular support for its goal. As a result, the Susan B. Anthony Amendment granting women the vote became law in 1920. As a long-term legacy for substantial improvement in the status and conditions of American women, the suffragist resort to the argument from

expediency did not serve women well, however, as the demise of the feminist movement after 1920 indicates.

That the passage of the suffrage amendment heralded no revolution in the status of women should have come as no surprise, however. The failure of the suffragists to attack the prevailing definition of the nature of woman and the social roles appropriate to it meant that the deep-seated prejudices which had worked to inhibit the integration of women into the traditionally male political system of the United States, and the institutional arrangements which reflected this prejudice, remained unchallenged. For women the problem of becoming equal participants in the political process has been made especially difficult by their failure to create among themselves a self-conscious interest group voting its own interest. Lacking such a constituency, modern American feminists have turned to a variety of tactics to promote the election of women to public office and to create support for reforms particularly important to women. Major feminist organizations have focused their efforts on providing expertise and voluntary help for women seeking public office.

In contrast to their forerunners in the suffrage movement, modern American feminists realize that major social changes are essential if women are to achieve equality of opportunity within all major institutions, including those that are political. In order to achieve that goal, it will be necessary to undermine the system of social values which mandates the delegation of virtually all positions of authority in American society to men. Thus, feminist attacks on discrimination against women in the law, employment, and education are directed as much against the attitudes which underlie such practices as against the practices themselves. Because increasing the participatory role of women in American government implies such far-reaching changes in all institutions, its accomplishment will require much time and effort.

The Importance of "Consent of the Governed" Today

Another group in American society which has had to fight prejudice and discrimination in order to participate fully in the political system is American blacks. Although black men theoretically possessed the right to vote as a consequence of the Fourteenth and Fifteenth Amendments, black Americans found the promise of the American Revolution an empty one until the Voting Rights Act of 1964 outlawed the discriminatory laws and practices which effectively denied them the right to participate in electing lawmakers in the South. The recent renewal of that law indicates the importance of continual vigilance to ensure that Amer-

ica's minorities retain their fundamental right to vote. As with women, a full participatory role for blacks in government awaits their attainment of equality of opportunity in all major institutions of American society.

As the experiences of women and minority groups indicate, access to the ballot box alone is not sufficient to guarantee a meaningful participatory role for citizens. In contrast to the agricultural and commercial society of the Founding Fathers, twentieth-century America has become industrialized and urbanized, with the result that all social, economic, and political institutions have developed a complexity unimagined in the eighteenth century. In order to lend stability, order, and coherence to such a society, the power of the federal government has increased dramatically. As a result, the American citizen has found that, while the impact of government on his or her life has been growing, his or her ability to understand and influence the actions of the government has diminished considerably.

A variety of situations has contributed to this erosion of the citizen's ability to give informed consent to the laws by which he or she is governed. In the first place, the vastly increased size and scope of federal authority militates against the voter who wants to remain informed on governmental activities in order to hold the elected officials accountable for their actions. Few citizens have the time, ability, or background to become experts on the federal tax structure, the defense needs of the nation, the impact of federal policies on economic development, and a myriad of other equally complex questions which confront our elected officials. In fact, the lawmakers themselves have great difficulty keeping track of all the legislation introduced into each session and providing themselves with a solid grounding in the nature of the problems to be solved and the probable impact of each piece of legislation. For that reason the executive and legislative branches of government have turned increasingly to the use of experts in the determination of policy. To complicate matters further, the experts in any given field can differ widely in their interpretations of public policy matters, leaving the public officials and the voters with the problem of deciding which viewpoint is correct.

In order to increase their understanding of political issues, Americans have increasingly turned to television as their source of information on the operations of their government and of interpretations of their significance. This development has been a mixed blessing. From the civil rights drama of the 1950s and 1960s to the Vietnam war, television has forced to the attention of American citizens the great political, social, and moral questions of their day. The immediacy of television has made real to many Americans events which, described on paper, might have

seemed less compelling and important. On the other hand, television tends to emphasize sensational aspects of events at the expense of other equally important issues which are less dramatic or less suitable for the visual presentation of television. Moreover, the necessary brevity of the daily news program has contributed to the simplification of complex issues and the omission of many stories.

In addition to its growing role in providing information to the American voter, television has profoundly affected the American political process through its central role in modern political campaigns. Because it offers an easy way to reach large numbers of people at once, the political commercial has come to dominate campaigns for state and national offices. The reliance on the 30-second television spot has done little to encourage reasoned, thorough debate on the issues at stake in an election. Instead it has contributed to an increasing use of the packaging and public relations techniques characteristic of the advertising industry, with the result that concern about images replaces concern about issues, and the positions of the candidates are often obfuscated. Moreover, it denigrates the American voter to the status of a malleable entity to be manipulated by rhetoric and slogans. At its worst, the political commercial allows an unscrupulous candidate to smear his opponent in a last-minute media barrage and, at its best, it is far removed from the democratic electoral process envisioned by the Founding Fathers.

The growing media domination of political campaigning has also added substantially to the skyrocketing costs of running for office and the consequent reliance on large contributors to finance campaigns. As the Watergate revelations indicated, the potential for abuse in such a situation is substantial. Recent legislation has limited the amount of money an individual can give to a particular candidate and has provided for limited public funding of national campaigns, but such reforms cannot completely sever the close ties between private wealth and those who seek public office. Whether through formal lobbying or informal contacts, wealthy individuals and representatives of large corporations will continue to possess a great deal more influence in the formation of public policy than does the average citizen.

In addition to illuminating the problems created for a democratic system by the high costs of campaigning, the Watergate scandals also underscored the threat to democratic processes posed by the vast and hidden powers of the presidency. The Nixon administration's zeal for wiretapping without prior court approval and its willingness to resort to burglary in order to obtain information regarding the sources of leaks to newspapers, all in the name of national security, indicate the extent

to which individual rights to privacy and free speech were disregarded. The use of "dirty tricks" by the Committee to Re-elect the President in order to sabotage the campaigns of political opponents, and the creation of the White House Enemies List, along with the plans to use various government agencies to gather data on the designated political foes in order to harass them, hardly conform to the dictates of democratic theory regarding the need for the free expression of dissenting opinions in an open political system.

Moreover, the wrongdoings of the Nixon administration focused attention on the growing power of the White House staff, a group of people appointed to their positions by the President without any mandatory review by the elected representatives of the American people in Congress. The practice of delegating the responsibilities traditionally exercised by Cabinet members to those of the presidential staff has become more commonplace in recent administrations, diminishing the accountability of decision-makers to the American public. Not only can such persons acquire vast powers over the formulation and administration of American laws, they can do so in a way that often eludes the spotlight, making them virtually unknown to the majority of American voters.

In response to these and other impediments to citizen participation in decision-making, a variety of proposals for reform has been made. Among the most common is for a brake on the accretion of power at the national level and a return to a federal system in which substantially more power is exercised in smaller units of government. This would mean not only the reassumption of authority by state and local governments in matters now handled by the federal government, but also a restructuring of municipal government so that neighborhoods would have a greater voice in matters affecting their interests. Advocates of decentralization contend that these changes would facilitate meaningful citizen participation in public affairs by increasing the opportunities for such participation and by bringing government down to a more manageable level.

This approach, however, also has its problems. The growing apathy of the American voter has been nowhere more apparent than at the local level, where the turnout at the polls is even lower than that in national elections. Moreover, the centralization of power at the federal level has been a product of the inability or the unwillingness of local governments to handle the problems they faced. Had the states, especially in the South, been willing to extend to blacks their fundamental rights, including that of suffrage, then it would have been unnecessary for the federal government to intervene. Moreover, many of the public policy questions

facing Americans today transcend municipal and state boundaries and require some kind of coordination, either regional or national. In the final analysis, diminishing the power of the federal government will be a very difficult goal to accomplish.

Although some reform of our political institutions can be utilized to check the power of government over individual lives and to give citizens more voice in the lawmaking process, it is questionable whether institutional reorganization alone is sufficient to accomplish these goals. The Revolutionary generation's faith in the concept of government by the consent of the governed was predicated on a belief in the willingness of citizens to participate in the political process and in the ability of those who hold office to exercise their authority with restraint and a concern for the general welfare of the nation. The legacy of the American Revolution in this regard served the nation well in the struggles to extend the right to vote to all adult Americans, but it faces an even more difficult challenge if the concept of participatory democracy is to be made viable in the complexities of twentieth-century American society.

Persistent Questions Related to the "Right to Liberty"

- To what extent have the values represented by the Declaration of Independence been superseded by other competing values in regard to the social and political status of minority groups and women in American society?
- Is the concept of government by the consent of the governed viable in the realities of twentieth-century American society? Or have we reached a point at which the eighteenth-century value is incapable of application?
- Are there any groups within American society still deprived of their suffrage? Or have the American people concluded the process of democratizing—in that specific sense—their basic political system?

FOR FURTHER READING

On the Event:

Anthony, Katherine. *Susan B. Anthony: Her Personal History and Her Era.* New York: Russell and Russell, 1975.

Flexner, Eleanor. *Century of Struggle.* New York: Atheneum, 1972.

Lutz, Alma. *Susan B. Anthony: Rebel, Crusader, Humanitarian,* Boston: Beacon Press, 1959.

Stanton, Elizabeth Cady, Anthony, Susan B., and Gage, Matilda Joslyn, eds. *History of Woman Suffrage.* New York: Arno and The New York Times, 1969. Vol. 2.

On the Value:

Bailyn, Bernard. *The Ideological Origins of the American Revolution.* Cambridge: The Belknap Press, 1967.

Conkin, Paul. *Self-Evident Truths.* Bloomington: Indiana University Press, 1974.

Dahl, Robert. *Polyarchy: Participation and Opposition.* New Haven: Yale University Press, 1971.

Pateman, Carole. *Participation and Democratic Theory.* London: Cambridge University Press, 1970.

FOOTNOTES

[1] *History of Woman Suffrage,* ed., Elizabeth Cady Stanton, Susan B. Anthony, and Matilda Joslyn Gage (New York: Arno and The New York Times, 1969), II. 645.

[2] *Ibid.,* p. 644.

[3] Samuel Johnson, "Taxation No Tyranny," in *Words That Made American History. Colonial Times to the 1870's,* ed., Richard Current and John Garraty (Boston: Little, Brown and Co., 1962), p. 120.

[4] Jonathan Boucher, "On Civil Liberty, Passive Obedience, and Nonresistance," in Current and Garraty, p. 148.

[5] Bernard Bailyn, *The Ideological Origins of the American Revolution* (Cambridge, Massachusetts: The Belknap Press, 1967), p. 186.

[6] Thomas Jefferson, "A Summary View of the Rights of British America," in Current and Garraty, p. 178.

[7] Judith Sargent Murray, "On the Equality of the Sexes," in *The Feminist Papers,* ed., Alice Rossi (New York: Bantam Books, 1974), p. 21.

[8] Letter, Abigail Adams to John Adams, March 31, 1776, in Rossi, pp. 10-11.

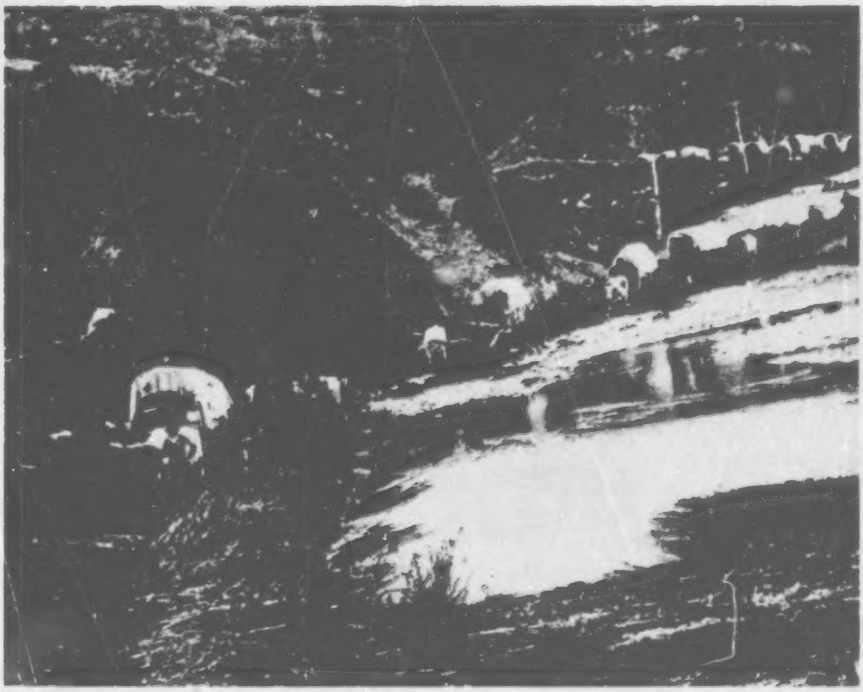
[9] Letter, John Adams to Abigail Adams, April 14, 1776, in Rossi, p. 11.
[10] Carl Holliday, *Woman's Life in Colonial Days* (New York: Frederick Ungar Publishing Co., 1960), p. 143.
[11] *Ibid.*, p. 144.
[12] Angelina Grimké, "Letters to Catherine Beecher," in Rossi, p. 319.
[13] Gerda Lerner, *The Grimké Sisters from South Carolina* (New York: Schocken Books, 1971), p. 7.
[14] "Declaration of Sentiments," Seneca Falls Convention, in Rossi, p. 416.
[15] *History of Woman Suffrage*, II, 94-95.
[16] *Ibid.*, p. 169.
[17] Eleanor Flexner, *Century of Struggle* (New York: Atheneum, 1972), p. 145.
[18] *History of Woman Suffrage*, II, 349.
[19] *Ibid.*, p. 596.
[20] *Ibid.*, p. 598.
[21] *Ibid.*
[22] *Ibid.*, p. 627.
[23] *Ibid.*, p. 934.
[24] Katherine Anthony, *Susan B. Anthony: Her Personal History and Her Era* (New York: Russell and Russell, 1975), p. 283.
[25] *History of Woman Suffrage*, II, 649.
[26] *Ibid.*, p. 936.
[27] *Ibid.*
[28] *Ibid.*
[29] *Ibid.*, p. 631.
[30] *Ibid.*, p. 644.
[31] *Ibid.*, p. 655.
[32] *Ibid.*
[33] *Ibid.*, p. 664.
[34] *Ibid.*, p. 687.
[35] *Ibid.*, p. 688.
[36] *Ibid.*
[37] Susan B. Anthony Diary, June 18, 1873, June 20, 1873, Susan B. Anthony Papers, Container 2, Library of Congress.
[38] *History of Woman Suffrage*, II, 689.
[39] *Ibid.*, p. 947.
[40] *Ibid.*, p. 945.
[41] *Ibid.*, p. 944.
[42] *Ibid.*, p. 695.
[43] *Ibid.*, p. 738.

CHAPTER THREE

Freedom from Government

CASE STUDY: THE MORMON FRONTIER EXPERIENCE

John R. Wunder



TO SECURE THESE RIGHTS: LIBERTY (II)

The inalienable right to liberty, secured by governments deriving their powers from the consent of the governed, could hardly be misunderstood in the context of ideas of the Revolutionary era. Processes for involvement and participation by citizens in public affairs rapidly were delineated by the new states and nation, and there soon began the transition by which republican forms were democratized to extend opportunities for participation. But liberty, in the context of the times, also pointed in another direction. The Declaration and the events it was constructed to explain and justify centered on a desire to be free from government as Britain governed her American provinces. The "right of revolution" also was described in the Declaration, set down in an equation by which revolt against constituted authority could be sanctioned: "whenever any form of Government becomes destructive of these Ends [the enumerated rights], it is the Right of the People to alter or to abolish it, and to institute new Government. . . ."

Once American independence was secured, and the basic descriptions of processes for securing public order were agreed to, the states and the nation—now the legitimate, sanctioned authorities—naturally assumed the posture of such authorities. The rules were completed, and those who participated in them or were governed by them were expected to follow the processes detailed. Insuring a wide arena for citizen involvement, considerable latitude of dissent from majority decisions was conceived as tolerable and useful. Bills of rights, establishing safeguards for freedom of speech, assembly, press and petition, were incorporated into the rules.

The concept was quite clear: policies and programs established in accordance with the rules might be freely challenged in the market of public opinion, by speech and by writing. If dissenting opinions or minority interpretations were persuasive enough, the opinions would become majority opinions, and the process would allow change as desired. So long as the process was open and unclogged, and citizens were patient in their willingness to accept current conditions in the knowledge that change could be effected, there

would be no need to employ the engines of revolution that Jefferson and his colleagues described as legitimate.

Two hundred years of experience demonstrate that, to an astonishing degree, Americans have tolerated delay in effecting change, accepting present-day inequities and abuses while working "within the system" to convert minority views to majority policies. They have, consciously or otherwise, exhibited actions consonant with the Declaration's further words: "Prudence, indeed, will dictate that governments long established should not be changed for light and transient Causes; and accordingly all Experience hath shown, that Mankind are more disposed to suffer, while Evils are sufferable, than to right themselves by abolishing the Forms to which they are accustomed."

But there also is evidence that, at times, the formula did not hold. The Civil War, the most traumatic experience in the history of the Republic, is illustrative of that fact. And every generation has seen less costly and less bloody similar illustrations. In each case, the pattern has been similar.

Committed to concepts different from, or hostile to, majority policies, those wishing to be free from government, in order to pursue their own social or economic or religious objectives, have had no difficultly doing so unless, or until, majority America has decided it could no longer tolerate deviation and dissent from majority views and has moved to force conformity. Then, what to majority America has been a legitimate exercise of the "public will," to the minority has become oppressive government, depriving it of the inalienable right to liberty.

Sometimes the oppression has been actual and real; at other times it has only appeared as likely, or predictable, or anticipated. In either case, in response to a moral imperative, a religious calling, a higher law, and impatient or despairing of success in converting sufficient numbers to become itself a majority, the minority has sought other means to secure its rights. Those means, at times, have been forceful, even violent. The attempt to balance freedom and authority—liberty and order—has failed, as the desire to be free from government considered oppressive has generated a crisis in public affairs.

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interest in the history of the American frontier. He has edited the Proceedings of the Criminal Justice Symposium, Region X *(1974) and a* Pacific Northwest Sourcebook *(1974). He taught at Green River Community College and at Lewis and Clark College before becoming a member of the faculty at Case Western Reserve University.*

To illustrate how the promise of the Revolutionary era inherent in a concept of liberty (freedom) from oppressive government fared in actual application, Wunder selected as a case study the history of the Mormons (Church of Jesus Christ of Latter-day Saints) in nineteenth-century America. That history, pictured on a spatial canvas stretching from New York state to the great valley of Utah and extending in time from 1830 to the closing years of the century, provides us a window through which we may view ideas and values in action.—Carl Ubbelohde

The Desire for Freedom from American Government

> . . . whenever any form of government becomes destructive of these ends [life, liberty, and the pursuit of happiness], it is the right of the people to alter or to abolish it, and to institute a new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness.[1]

The Declaration of Independence, formulated by Thomas Jefferson in 1776, justified the grievances American colonists had against George III and it also made a statement of general social policy justifying revolution. The document asserted that all persons have certain inalienable rights, including the right to life, and to liberty, and to the pursuit of happiness. The purpose of government is to secure these "natural rights" of the people. Government gains its power from the people and whenever it does not secure the people's heritage, they have the right and duty to do away with that government.

Basic to the Declaration of Independence was the realization of a compact formed between Americans and their government. Because of the exalted position of the people, only government could breach that

compact. Certainly it was easy for Jefferson and his co-signers to decide *that George III had abrogated all governmental responsibility,* but when, on other occasions, would one know that government was not fulfilling its duties to the people? In essence, American tradition in the written form of the Declaration encouraged a strict monitoring of government and revolution, but it did not provide a set answer for the conditions under which freedom from government should be sought.

Jefferson asserted that only some revolutions were justifiable. Indeed, he stated that the right to freedom from government was a *conditional,* not an absolute, right. No government should be deposed because of "transient" factors; instead, extreme despotism had to be exhibited by leadership to justify any mutiny on the ship of state.

Thomas Jefferson also believed that government *per se* was inevitable and that a democratic form of government within proper checks and balances was the best type. Majority rule with minority rights symbolized his philosophy. Jefferson, perhaps more than any other early American leader, recognized the problem of maintaining a revolutionary posture under a stable framework of government.

And yet, at times, Jefferson himself infringed upon the rights of persons in fundamental disagreement with his policies. As President he prejudged Aaron Burr before his treason trial and found him guilty. He maintained that Burr's mysterious and abortive military expedition down the Mississippi River breached national security. In an unusual display of presidential interference with the judicial process, the stern advocate of the Bill of Rights gathered evidence, interrogated witnesses, and demanded depositions in order to destroy Burr.

During another incident as President, Jefferson reacted as strongly as he had in the Burr case. In 1807, at his urging, Congress enacted the Embargo Act, designed to prevent the United States from becoming involved in the wars of England and France. This law, and three others of a similar nature, prevented Americans from exercising their traditional trade relationships. When Vermonters who shipped logs over Lake Champlain to Canada were not to be deterred, Jefferson viewed their defiance as a regional insurrection. He sent in the army and the navy to patrol the border areas, and he vigorously urged treason trials prosecuted to their fullest against the dissidents. Jefferson's actions aroused the ire even of his own Republican judicial appointees, who believed the President's actions were not proportionate to the infractions of the statutes.

Thomas Jefferson also strongly believed in the sanctity of individual liberties under government and, very early in his political career, he espoused such revolutionary ideas as the abolition of slavery and respect

for Native American cultures. Yet he could not ever bring himself to free Sally Hemings, his household slave and confidante, and other blacks he owned; and it was Jefferson who fathered the concept of Indian removal, the forced evacuation of all tribes from east of the Mississippi River to the lands of the Louisiana Purchase that perpetrated great hardships and monumental stresses upon the Cherokees and other Native Americans. Cherokees, Sally Hemings, Vermonters, and Aaron Burr—all had reason to wish to be free from Jefferson's government.

It should be noted that Jefferson was a man of another time, an eighteenth-century revolutionary and an early nineteenth-century leader of government, who quite naturally could not maintain an absolute harmony between theories and practice. Still he foresaw the onus perpetrated by a despotic government and the counter force created to end oppression. The new nation and its new government, built to protect the ideals of liberty, has found, as did Thomas Jefferson, that the dynamics of freedom from government are firmly imbedded in the American experience. It has discovered no way, in almost two centuries, to cease struggling with the conceptual seeds of anarchy.

Many persons and groups in those two centuries have sought freedom from constituted government. Majority rule may be oppressive—in theory or in fact—to minorities. Outstanding examples abound. In the eighteenth century, western Pennsylvanians attempted to rebel against a tax on whiskey. In the nineteenth century, Henry Thoreau repeatedly sought refuge from the evils or responsibilities placed upon him by his "governors." Nat Turner and his black followers attempted to overturn the shackles of legalized slavery. And in the twentieth century, Midwestern farmers during the Great Depression rejected an edict of governmental authority and for a time prevented foreclosures of mortgages on their lands. More recently, pacifists hid, fled, or were jailed for rejecting the central government's demands for participation in the wars of Southeast Asia. Indeed, it could be argued that Americans have revered freedom from their government as frequently as they have paid homage to that government itself.

Freedom from American government sometimes has meant the triumph—of individuals or groups—over conflicting majority policies and programs, and perhaps nowhere was independence more readily attained than on the American frontier. Without fully developed communication and transportation networks, the hinterland inhabitants often enjoyed a relatively extended degree of freedom from government. People became squatters on the rich farmlands of the Midwest, or fur-traders in the rugged Rockies, or miners on the creeks and rivers of California, or loggers in the forests of the Pacific Northwest, in part

because they could not be touched by established order. The promise and maintenance of a high level of individual freedom was a major motivational feature of the westward movement.

When confronted with the inevitable need for order, members of the frontier advance might resist American government or advocate a government under American law with hegemony vested in local control. One homogeneous frontier colony that actively pursued and occasionally achieved autonomous minority rights within the American nation directed by majority rule was that of the Mormons. Throughout the nineteenth century the Mormons struggled against what they considered oppression, trying to achieve freedom from government.

Case Study: Mormonism in the Nineteenth Century

Mormonism, one of America's rare original contributions to religion, was founded by its prophet Joseph Smith in 1830. Religious fervor, economic solidarity, political autonomy, community ostracism, frontier treks, murder, war, and semi-capitulation before the United States Supreme Court and Congress highlight its early history.

Joseph Smith was born in Sharon, Vermont, on December 23, 1805. When he was ten years old his family moved to Palmyra, New York, and shortly thereafter they settled in Manchester, New York. At fourteen, young Joseph began to concern himself with his life's calling and purpose. This was not surprising considering the era and location of his home. Upper New York was a center of periodic "soul-searching traditions of predestinarian Calvinism,"[2] and aptly came to be termed the Burnt-over District. Smith became aware of great diversities in Christian Protestantism, each branch of which claimed perfection, and after his initial investigations further reflection seemed necessary. Then, according to Smith, on September 21, 1823, a messenger angel, Moroni, appeared and informed him that he "was chosen to be an instrument in the hands of God to bring about some of his purposes in this glorious dispensation."[3] Joseph also claimed that Moroni told him of golden plates engraved with hieroglyphics.

Four years after Moroni's visit, Smith began the translation of the plates. For two years Smith related what was said to be the message of the plates aloud for several comrade secretaries who recorded his interpretations. By 1830 the *Book of Mormon* was finished and published in English, and the Church of Jesus Christ of Latter-day Saints had been constituted with Joseph Smith as its leader.

The *Book of Mormon* related the history of Lehi and his people who

fled Jerusalem around 600 B.C. Lehi, his spouse Sariah, and their four sons, Laman, Lemuel, Sam, and Nephi, were warned by the Lord to escape into the wilderness before Jerusalem, tainted by the inhabitants' iniquities, was destroyed. The family of Lehi suffered greatly in its travels, moving from Palestine across the Arabian peninsula, probably to the Indian Ocean, whereupon they built a boat which would transport them to the land of fulfillment—America. Unfortunately Lehi died shortly after the landing and his sons became enemies and progenitors of conflicting peoples. The Nephites, according to the *Book of Mormon*, were generally honorable, wholesome, and white; they moved northward away from the evil influences of the Lamanites who, according to Mormon doctrine, because of their sinister ways, were cursed with a permanent skin darkening by God. The Lamanites became the ancestors of the American Indian.

Aside from a brief generation of peace when Jesus Christ appeared among both peoples, the Nephites and Lamanites constantly fought bloody battles in which the white Nephites usually prevailed over the dark Lamanites. But eventually the Nephites developed into a sinful people, God's confidence in them eroded, and the Lamanites destroyed all the living Nephites in America save Moroni, who buried the epic of his kin on golden plates that would be made known to an extraordinary prophet. That prophet was to present the sacred revelations to all in the world.

For those who read and accepted its words, the *Book of Mormon* represented a divine textual call for a new religion. But this different dogma required more than intellectual belief. Inherent within this guide were the seeds of group solidarity and group separatism. When Mormon, father of Moroni, concluded that his people, the Nephites, had strayed from God's will and that the Lamanites would overthrow them, according to the *Book of Mormon*, "it came to pass that I [Mormon] did go forth among the Nephites, and did repent of the oath which I had made, that I would no more assist them. . . ."[4] Mormon rejected his own law and institutional frameworks on the basis of his own interpretive higher order. He echoed these sentiments in his last accounting, and reminded future followers, "And Christ hath said, 'If ye will have faith in me, ye shall have power to do whatsoever thing is expedient in me'."[5] Thus, the revelations to Joseph Smith encouraged the individual to develop the psychological edge necessary to proclaim one's freedom from oppression and one's ability to reject established order.

The Church of Jesus Christ of Latter-day Saints was well founded in rudimentary Christianity. Its religious promulgations included "worship

of a personal God, acceptance of the *Bible* . . . as divine scriptures, and an emphasis upon education and group progress."[6] But Mormons also believed the *Book of Mormon* to be equally as divine as the *Bible*, and Joseph Smith to have sacred authority to lead a new—and the only true —church. These latter characteristics made early proselytization slow among frontier Christians and also contributed to an initial persecution by a majority society.

The reaction of Joseph Smith's neighbors to the revelations varied. Stephen Harding, a Non-Mormon and future governor of Utah, recorded that the so-called golden *Bible* ". . . was found by a young man named Joe Smith, who had spent his time for several years in telling fortunes and digging for hidden treasures, and especially for pots and iron chests of money, supposed to have been buried by Captain Kidd."[7] To Harding, in 1830, Smith was a harmless adolescent capable of generating enormous fantasies. Samuel Smith, brother of the prophet, met more open resistance. While on one of the first Mormon missions, Samuel tried to peddle the *Book of Mormon* to an innkeeper. Upon entering the hotel, he attempted to persuade the landlord to buy a copy of what he termed a history of Indians.

"I do not know," replied the host, "how did you get hold of it?"

"It was translated," rejoined Samuel, "by my brother, from some gold plates that he found buried in the earth."

"You d—d liar!" cried the landlord, "get out of my house—you shan't stay one minute with your books." [8]

Samuel left without a sale, but later that summer his efforts resulted in a small number of successful conversions, notably that of Brigham Young.

Others treated the early Mormons with greater disdain. New York frontier residents saw the Smiths as "blasphemers," and they deliberately destroyed a dam built by their followers for baptisms. After the font was re-created, a mob harassed Joseph and his church members, forcing them into a farmhouse. That evening a hostile constable served Joseph with a warrant based upon fabricated "facts" charging him with disorderly conduct.[9]

Joseph endured two trials, two acquittals, and many verbal threats and epithets from those who attended the court proceedings. By 1831, in addition to their neighbors' growing intolerance, the Smiths faced bankruptcy, probable loss of their farmlands, and the pressures of the new converts to get on with the business of organizing the "true church." When Sidney Rigdon, a highly successful evangelist, a former Camp-

bellite (a sect later to become the Disciples of Christ), and a recent Mormon convert, invited the prophet to relocate in Rigdon's colony at Kirtland, Ohio, Joseph readily accepted.

The Saints in Ohio and Missouri

The first of several Mormon migrations gave a renewed spirit and composition to the Saints, members of the Mormon Church. Approximately one hundred and fifty converts at Kirtland doubled the size of the congregation, and many more were moving to Ohio's Western Reserve daily. Among the new Saints were two influential men, both of whom said they were converted by miracles.

Ezra Booth, a popular Methodist evangelist, came to Kirtland with a Mrs. Johnson, who was partially paralyzed, to interview Joseph Smith. Booth baited Smith to heal Johnson, whereupon the prophet silently arose, took the woman's limp arm, and demanded, "Woman, in the name of the Lord Jesus Christ, I command thee to be whole!"[10] Calm prevailed over the room as Mrs. Johnson raised her reclaimed arm. Booth and the Johnson family were immediately converted to Mormonism. Symonds Ryder, a well-known preacher for the Campbellites, was also converted but on the basis of a lesser miracle. When a young Mormon woman correctly predicted the catastrophic Chinese earthquake in 1831, Ryder was so impressed that he joined the Mormons and promptly began to proselytize for his new faith. Both Ryder and Booth lent credibility to the young sect, but in time they would cause it considerable strife as well.

Joseph Smith's move to Kirtland had brought his movement its first major success. Significant conversion milestones had been reached in numbers and in the social status of some of the new adherents to Mormon doctrines. Land had been cleared and farming commenced, and an ambitious temple project had been started. The colony's prosperity allowed for the seeding of another colony which arose in Jackson County, Missouri, under the guidance of Joseph and the express direction of confidants Parley Pratt and Oliver Cowdery.

In these good times, Smith claimed further revelations that cemented Mormon social and economic dogma. All property was to be allocated and regulated by the church leadership on the basis of group interest, fairness, and stewardship. Such communal unity gave the Saints unusual strength, but it left the order open to dangerous splintering dissent.

When economic conditions changed, individuals (minority interests)

within the Mormon community began to question "majority" Mormon rule. The economic and social harmony of the Mormons disintegrated in the panic and depression of 1837. Joseph, like many Americans of the 1830s, had invested heavily in highly speculative banks. When the crash occurred, the Mormons lost much of their hard toiled wealth. Their debts left their lands in jeopardy, and some blamed their leader.

Even before the panic, rumblings among the converts had surfaced. Smith himself endured a physical attack and a tar-and-feathering by a riotous group that included Booth and Ryder. Ryder was especially upset with the prophet because he had misspelled his name. Ryder asserted that "if the Spirit could err in spelling, it might have erred in calling him to the ministry as well."[11] The mob set upon Smith who recorded his feelings of fear and humiliation:

I made a desperate struggle, as I was forced out, to extricate myself, but only cleared one leg, with which I made a pass at one man, and he fell on the door steps. I was immediately overpowered again; and they swore by G--, they would kill me if I did not be still, which quieted me. . . .

They then seized me by the throat and held on till I lost my breath. After I came to, as they passed along with me, about thirty rods from the house, I saw Elder Rigdon stretched out on the ground where they had dragged him by his heels. I supposed he was dead. I began to plead with them, saying, "You will have mercy and spare my life, I hope." To which they replied, "G-- d--- ye, call on yer God for help, we'll show ye no mercy." . . . They held a council, and as I could occasionally overhear a word, I supposed it was to know whether or not it was best to kill me. They returned after a while, when I learned that they had concluded not to kill me, but to beat and scratch me well, tear off my shirt and drawers, and leave me naked. One cried, "Simonds, Simonds, *where's the tar bucket?*" "I don't know," answered one, *"where 'tis, Eli's left it."* They ran back and fetched the bucket of tar, when one exclaimed with an oath, *"Let us tar up his mouth";* and they tried to force the tar-paddle into my mouth; I twisted my head around, so that they could not; and they cried out, *"G-- d--- ye, hold up yer head and let us giv ye some tar."* They then tried to force a vial into my mouth, and broke it in my teeth. All my clothes were torn off me except my shirt collar; and one man fell on me and scratched my body with his nails like a mad cat, and then muttered out: *"G-- d--- ye, that's the way the Holy Ghost falls on folks!"*

They then left me, and I attempted to rise, but fell again; I pulled the tar away from my lips, so that I could breathe more freely, and after a while I began to recover, and raised myself up, whereupon I saw two lights. I made my way towards one of them, and found it was Father Johnson's. When I came to the door I was naked, and the tar made me look as if I were covered with blood, and when my wife saw me she thought I was all crushed to pieces, and fainted. . . .[12]

Joseph Smith responded to the challenge to his revelations and divinity by damning the dissenters and moving his church of true believers to northern Missouri—the greater zion. To the prophet, his troubles had not been caused by an angry God, a cancer from within, or a mistaken faith in a shaky national economy. He believed that the Gentiles—the non-believers and majority Americans—desired the elimination of the Saints and their sacred leader.

The relocation from Ohio to Missouri marked a fundamental shift in doctrinal emphasis for the Mormons. No longer would their society suffer from Gentile political control. They had already seen that a degree of economic independence could be achieved, and now they were prepared to grapple for control of their own political destiny. Sidney Rigdon spoke for the Saints on July 4, 1838, when he cautioned, "We will never be the aggressors, we will infringe on the rights of no people; but [we] shall stand for our own until death." Rigdon warned all Non-Mormons to stay away from their settlement. If they did not heed these words, anyone who disobeyed ". . . shall atone for it before he leaves this place. . . ." Indeed, Rigdon caught the spirit of the Declaration of Independence and the American tradition of freedom from government when he intoned, ". . . we proclaim our liberty on this day, as did our fathers. And we pledge this day to one another, our fortunes, our lives, and our sacred honors, to be delivered from the persecutions which we have had to endure for the last nine years, or nearly that." After only sixty-two years since the signatures had dried on the United States' most revolutionary document, Mormons declared their independence from oppression. "We this day then proclaim ourselves free, with a purpose and a determination, that never can be broken, 'no never! *no never!!* NO NEVER!!!' "[13]

Joseph Smith and his followers had good reason to express their disgust at government. A group of Jackson County Missourians had met on July 20, 1833, to rid their county of what they considered to be 12,000 heathen fanatics. They passed a five-point declaration which they pledged to implement with force if necessary. No more Mormons could move to Jackson County. All Mormons presently there had to leave "within a reasonable time." All Mormon newspapers must cease publication and all Mormon shops had to close.[14]

The Saints considered the Jackson Declaration to be illegal, and they petitioned Governor Daniel Dunklin of Missouri to prevent any forced deportations. Dunklin urged them to appeal to local courts for relief, but all of the Jackson County legal officials—justices of the peace, lawyers, constables, and deputies—had signed the document ordering the Mormons to cease and desist. Angered at what seemed a deliberate

delay, mobs of Gentiles began a guerilla war designed to force the Saints into compliance. Night raids resulted in burnt houses and physical depredations on Mormon men. Then on November 4, 1833, the Mormons decided to meet violence with violence. Poorly armed, they were humiliated by the Missourians. That winter, the Saints evacuated Jackson County.

Moving east, the Mormons decided to set up their own settlements, Far West and DeWitt, and their own county, Caldwell. Here they might be safe from Gentile incursions. In the summer of 1838, the church purchased 250,000 acres from the federal government for $318,000 and opened up approximately 2,000 farms. At Far West schools, dry goods stores, groceries, blacksmith shops, and over 150 houses were constructed.

Soon, however, the Far West settlement would become embroiled in war, turmoil, and collapse. On August 6, 1838, at a local election precinct in Daviess County, a citizen challenged a Mormon as a legal voter. Harsh words were exchanged; then clubs and knives were brandished. The Liberty, Missouri, *Western Star* reported that the Mormons gathered, "armed and equipped for war. . . ."[15] Young Saints drilled and trained for the expected confrontation; similarly local Missourians prepared for civil strife to protect themselves against the "Mormon Plot" to take over their lands and villages.

The Missouri civil war lasted for three months in the autumn of 1838. The state authorized $200,000 for military expenses. Both sides seemed willing to sacrifice blood and life. Skirmishes, pillaging, burning, and the highjacking of an ammunition train characterized the confrontation.

A minority within what they considered a hostile, oppressive majority, the Mormons challenged the authority of state and, indirectly, the Republic. Convinced of their "cause" they prepared for war to be free from a government they refused to acknowledge as legitimate.

Joseph, on October 14th, called all of his people to the center square in Far West. He extolled the Saints to united action: "I have a great reverence for the Constitution, but for the laws of this state I have no regard whatsoever, for they were made by a parcel of blacklegs."[16] He urged the crowd to fight until death. Those who shirked their responsibility to the "cause" could expect to have their property confiscated and to be prodded with bayonets and pitchforks to the front of the battles.

Word of Joseph's inflammatory remarks, as well as rumors that the Mormons had burned and looted two settlements, reached Governor Lilburn Boggs on October 25th. Two days later he issued a declaration of war to his militia. Mormon defiance of law, to Boggs, justified an unrestricted prosecution. "The Mormons must be treated as enemies,"

ordered the governor, "and must be exterminated or driven from the State if necessary for the public peace."[17]

Only three days after Governor Boggs' extermination order, nineteen Mormon men and boys were bludgeoned and blown apart by a savage mob. An eyewitness, Joseph Young, remembered the slaughter. "Among those slain I will mention Sardius Smith, son of Warren Smith, about nine years old, who, through fear, had crawled under the bellows in the shop, where he remained till the massacre was over, when he was discovered by a Mr. Gaze, of Carroll County, who presented his rifle near the boy's head, and literally blowed off the upper part of it."[18]

The massacre led Mormon leaders to reconsider their fate and sue for surrender. But capitulation almost resulted in the execution of the prophet. Joseph Smith, Sidney Rigdon, and five other leaders were tried before summary court martials and sentenced to death by gunshot. Fortunately for these Saints, General Alexander Doniphan refused to carry out the execution, and turned the beleaguered Mormons over to civil authorities. After six months in jail, Joseph Smith and his friends were freed when the sheriff and deputies deliberately got drunk and urged their prisoners to escape. Smith fled to Illinois where approximately 12,000 destitute Mormon refugees had huddled, temporarily united under the able guidance of Brigham Young.

Nauvoo and the Murder of the Prophet

The prophet soon saw in frontier Illinois a chance to play competing interests off against each other for the good of his people. The state's two political parties, the Democrats and the Whigs, were evenly matched at the polls. Hence, both parties willingly welcomed a significant voter influx controlled by a common ideology and a single leader. Smith drew up a charter for the proposed city of Nauvoo to be located on a swampy bend of the Mississippi River. The charter granted the Mormons a pseudo-independent status of city-state within the borders of Illinois. Nauvoo city officials could receive almost unlimited powers, including the right to set up their own judiciary and to staff and train their own militia. When the prophet tempted both the Whigs and the Democrats in the Illinois Assembly with Mormon support for the upcoming 1840 election, he demanded passage of the charter. The Whigs succumbed, passed the charter, and Joseph Smith, as mayor of Nauvoo, lieutenant-general of the Mormon militia, and president of the Church of Jesus Christ of Latter-day Saints, came to hold what some would describe as a lawful political dictatorship within the limits of nineteenth-century American democracy.

Feeling his new-found political strength, Smith personally petitioned President Martin Van Buren for federal monies in compensation for Mormon losses in Missouri. Van Buren refused Smith's request, and the prophet vented his thoughts toward the President: *"He is not as fit as my dog, for the chair of state;* for my dog will make an effort to protect his abused and insulted master, while the present chief magistrate will not so much as lift his finger to relieve an oppressed and persecuted community of freemen. . . ."[19]

Nauvoo grew quickly and prospered even without the compensation funds. The holy city contained some 15,000 Saints by 1844, many more people than any other city in Illinois. An elaborate Mormon temple, approximately 2,000 brick homes, and several small industries and shops dotted the landscape. One traveler observed of Nauvoo, "I do not believe that there is another people in existence who could have made such improvements in the same length of time, under the same circumstances."[20] It was Kirtland writ large. But, like the Kirtland experience, the prophet did not know how to handle success. Instead of consolidating and retrenching, he pushed forward toward greater powers.

Smith alienated both Whig and Democratic supporters by promising and then rejecting political agreements. He refused to recognize any Illinois law unless he approved it in writing. He demanded that Congress create a federal Territory of Nauvoo, free from all state interference. Finally, he announced for the Presidency himself, advocating such unpopular positions as freeing all political prisoners and slaves and annexing land in Canada. In short, Joseph Smith alienated what Gentile sympathies the Mormons had generated in their flight to Illinois.

Then, with his last revelation, he planted the spores of schism within his own ranks. In July, 1843, the prophet revealed that, justified on biblical foundations, polygamous marriages were sanctioned for Mormon religious leaders. In statutory language, Joseph declared, "if any man espouse a virgin, and desire to espouse another, and the first give her consent, and if he espouse the second, and they are virgins, and have vowed to no other man, then he is justified, he cannot commit adultery. . . ."[21] Smith also informed his wife Emma, who might not have consented to such a relationship, that he, Joseph, had been specifically commanded by the Lord to take more wives. And if Emma "will not abide this commandment she shall be destroyed, saith the Lord, 'for I am the Lord thy God,' and will destroy her if she abide not in my law."[22]

Emma Smith accepted her husband's radical social pronouncement, but many Mormons revolted. Led by William Law, and several other

high church officers, a faction opposed to the prophet's iron-fisted leadership and his polygamy revelation established a rival newspaper in Nauvoo, the *Expositor*. Its first issue appeared on June 7, 1844, and the message was a clear denunciation of Smith's new social ideas. The *Expositor* urged "the unconditional repeal of the city charter—to correct the abuses of the unit power,"[23] thereby stripping Joseph of all but his religious powers.

Smith reacted immediately with vengeance. As mayor, he called a meeting of the city council which deemed the schismatic paper a nuisance that should properly be destroyed. As commander of all law enforcement, he ordered his marshal and 300 armed deputies to smash the press, to eliminate all copies of the first issue, and if resistance was encountered, to "rip them from the guts to the gizzard."[24] The prophet's desires were satisfied, and the editors fled Nauvoo for neighboring Carthage.

Non-Mormons in proximity of Nauvoo had been nursing anti-Mormon grievances ever since the colony had been planted on Illinois soil. The stories of polygamy, political repression, and now destruction of a basic constitutional right—freedom of the press—seemed to demand action. Mobs agitated and gathered. The displaced editors swore out a warrant for Joseph Smith's and his brother Hyrum's arrest, and a constable was sent to apprehend the prophet. The warrant was served, but Joseph promptly issued his own writ of habeas corpus, and sent the constable back to Carthage empty-handed.

Anti-Mormons now were livid; Joseph Smith, in defiance of constituted authority, had flaunted law and order. Cries for blood and extermination once again could be heard in the heartland. Fearing civil war, Governor Thomas Ford called out the Illinois militia. He proposed to guarantee Hyrum and Joseph Smith's safety, assuming they would come peacefully to the Carthage jail. Joseph meanwhile had crossed the Mississippi intending to flee west, but friends persuaded him to return because of apprehensions that Nauvoo would be attacked. Smith consented, and, together with his brother and two others, was escorted to the Carthage gaol.

Joseph Smith said he had a premonition about his fate. He believed he would die soon, and accordingly he urged strength and fortitude to his wife, friends, and followers. Meanwhile Governor Ford attempted to control what threatened to be an ugly episode. When he realized that his militia was outspokenly anti-Mormon, he dismissed all but a trusted guard detail. Some of the militia dispersed but a company from Warsaw, Illinois, remained. They turned into a mob bent upon murder as they stormed the jail. The guard was quickly overtaken, and the militiamen

and others clambered up the wooden stairs. They tried to break down the door, but the Smiths and their two companions used all of their strength to hold it shut.

Then, shots and screams—Hyrum was hit in the neck, lurched backward and died. Now the door could be pried open and the murderers burst into the cell, firing at Joseph. According to Dr. Thomas Barnes, Carthage physician,

> It is said they must have hit him and probably disabled him, as he staggered across the floor to the opposite side of the room, where there was a window. It is said that there he gave the hailing sign of the distress of a Mason, but that did him no good. In the room behind him was armed men, furious men, with murder in their hearts. Before him around the well under the window there was a crowd of desperate men, as he was receiving shots from behind, which he could not stand, in desperation he leaped or rather fell out of the window near the well, where he breathed his last. When I found him soon afterwards he was lying in the hall at the foot of the stairs where his blood had as I believe left [an] indelible stain on the floor.[25]

Thus, on June 27, 1844, Joseph Smith, founder and prophet of the Church of Jesus Christ of Latter-day Saints, was brutally assassinated.

The Mormons in Utah

Reaction to the murder varied. Some Illinois residents hoped for a civil war to be perpetrated by the Nauvooites. The *New York Herald* predicted the demise of the sect. "They cannot get another Joe Smith. The holy city must tumble into ruins, and the Latter-day Saints have indeed come to the latter day."[26] For the Saints, the loss was excruciating. Some seemed disoriented; others vowed retaliation to "avenge their blood," if not in their time, then in their children's time.

But practical and strong leadership had to be found, and, fortunately for the Mormons, Brigham Young emerged as a nineteenth-century Moses to lead many of them out of the morass to the promised gardens of peace *and* political sovereignty.

In fact, Joseph Smith had contemplated moving from Nauvoo sometime before his death. He had planned an exploratory expedition to the Rocky Mountains to a suitable area for settlement—away from the reach of American government. After Smith's death, Governor Ford advised Brigham Young, "California now offers a field for the prettiest enterprise that has been undertaken in modern time . . . . Why would it not be a pretty operation for your people to go out there . . . and establish an independent government . . . ?"[27]

Whether or not Brigham Young specifically considered Governor Ford's suggestion is not recorded, but as early as the winter of 1845-1846, the Saints began planning their final trek to their last zion. Mormons sold their homes and personal property at ruinous prices, and they prepared wagons for a major trip. All the while anti-Mormon mobs threatened to invade Nauvoo. Then in February, 1846, 1,600 Mormons, including Brigham Young and the church hierarchy, braved the frozen Mississippi River and set up a temporary settlement at Sugar Creek, Iowa. Here they waited for the main contingent of refugees to join them and for a pioneer force sent ahead to build shelters, plant crops, and stockpile supplies.

The advance team reached Council Bluffs by June at the same time as the main congregation set out from Sugar Creek. The migration moved smoothly and efficiently across southern Iowa, and by October, 1846, over 12,000 Mormons had established Winter Quarters on the Nebraska banks of the Missouri River. There they would try to survive the severe cold and snows of a typical Great Plains winter.

During the Great Migration of 1846, Brigham Young and his attendants kept abreast of continental political developments. Clearly they desired as much hegemony as possible, and therefore they had to choose lands that were relatively isolated from other potentially covetous settlers and that would not be the object of intense American governmental concern.

Although Young's original choice was vaguely articulated as "California," he soon gained sufficient geographical knowledge to designate the Great Basin as the most appropriate site. It was a much better selection than California. Young noted that the Basin of the Bear River and the Great Salt Lake would make ". . . a point where a good living will require hard labor, and consequently will be coveted by no other people, while it is surrounded by so unpopulous but fertile a country."[28]

Young also realized that to achieve at least quasi-independence, he would need to cooperate with federal authorities. Fortunately for this strategy, a means was available. The election of 1844 had resulted in the triumph of the candidate of manifest destiny—the bellicose Tennesseean James Knox Polk. He appealed to many in America with his calls to annex Texas and occupy Oregon. By January, 1846, Texas had joined the Union, an act that made war with Mexico appear inevitable. Mexicans held Americans responsible for the Texas Rebellion, and they refused to recognize the southern boundary of their lost territory. Polk foresaw an opportunity to provoke Mexico, and perhaps to gain California; on January 13, 1846, he sent a troop detachment to the Texas-Mexico disputed border region. Three months later the awaited con-

frontation occurred in the form of a Mexican ambush on an American party. The United States declared war on its southern neighbor.

Young had dispatched Jesse Little to the East that same January to obtain any federal governmental aid available for the westward trek. The Mexican War provided the vehicle for securing money and federal protection for the Saints. President Polk offered to guarantee safety to the Mormons' settlement and $42 for each enlisted man (or $21,000 per battalion), advance pay for a year of service. Young responded quickly, ordering 500 of his male followers into the Mormon Battalion that would march with General Stephen W. Kearny through New Mexico and on to California. The money procured for the refugees the needed supplies for the last leg on their journey. Meanwhile, the federal promise of protection, and indirect recognition of the Mormon *raison d'être,* seemed to promise the desired opportunity for freedom to practice religious and social beliefs that were different from those of most Americans.

Having delayed their departure from Winter Quarters for one year to insure adequate preparation and replenishment, Brigham Young and 146 men and women in 73 wagons began the final stage of the Mormon Trail in April, 1847. Their goal was the Great Basin. Young ordered his mission to follow the Oregon Trail, only travelling on the north side of the Platte River so as to avoid any encounters with rowdies of a Gentile sort. By June, the Young band had reached Fort Laramie, and they pushed on to Fort Bridger, where crusty mountain man Jim Bridger urged them to go to the Williamette Valley rather than the harsh deserts of the Great Basin. Even though Bridger forebodingly wagered $1,000 for the first ear of corn produced in the Salt Lake flats, Young ignored such pronouncements of doom and his party forged onward into the rough Wasatch Mountains of northeastern Utah.

Then on July 21, a scouting party reached the summit of a pass where the Valley of the Great Salt Lake could be viewed. Word was sent back to the main body of travelers where Brigham Young, ill with mountain fever, exhorted his compatriots to hurry forward. On July 24, Young emerged from his wagon bed to be brought in a wheelbarrow to the edge of a cliff. There, according to Mormon legend, he charged his brethren: "This is the place." And there, the base of the Mormon enterprise in the trans-Mississippi West was founded.

Immediately upon their arrival, the Mormons began to plan for the building of the first American theocratic state since Puritan immigration to New England in the seventeenth century. Brigham Young and his fellow leaders investigated buying cattle, and directed the digging of irrigation ditches and planting of crops. Young further elaborated upon

Smith's economic proclamations declaring all land and resources, especially water, subject to allocation by the church-state, and soon 1,500 more settlers joined the Utah community.

The winter of 1847-1848 was a time of general suffering; the Great Basin proved to be a relatively inhospitable environment. Lack of foodstuffs, clothing, and shelter took their toll of life, but the spring and summer brought renewed and successful efforts at planting crops, and 1,800 more Saints arrived.

Two events outside Utah during the first months of the new year, 1848, significantly affected the Mormons. On January 24, gold was discovered on the American River in California. The Treaty of Guadalupe Hidalgo, signed on February 2, ended the Mexican War.

The California gold rush started in mid-1848 and reached its zenith in 1849 and 1850. Salt Lake City served as a way station, and by mid-1849 an estimated 40,000 would-be miners had passed through Utah, many needing supplies. Generally, the Mormons accommodated the travelers, gaining needed trade goods and a new respectable reputation in the East.

The conclusion of the Mexican War found the Mormons once again on American territory. Young foresaw two possible means by which his people could avoid federal interference in their affairs, and he proceeded along both routes simultaneously. Both options rested on the creation of the State of Deseret in 1849. Deseret encompassed the present-day states of Nevada and Utah and portions of Oregon, Idaho, Wyoming, Colorado, New Mexico, Arizona, and California.

This new State of Deseret could be a nation-state. A strong, independent Mormon sanctuary, cut off from the United States by the Great Plains, could exist and thrive. To achieve total freedom from American government, and to create a theocratic national organ, Young began to implement planned settlements in a "Mormon Corridor," stretching from the Great Salt Lake to San Diego, the new nation's outlet to the seas. By 1856, more than 22,000 Mormons had settled such communities in the Corridor as San Bernardino (California), Las Vegas (Nevada), Cedar City, Parowan, and Provo (Utah).

The State of Deseret could also be an instant state within the American federation. In March, 1849, Brigham Young called a convention which adopted a constitution typical of existing states, and petitioned Congress for immediate statehood. Young and the Mormon leadership hoped to preserve their theocracy by securing the sovereign powers of a state within the American Union.

When Congress opened debate over the proposed State of Deseret, it became obvious that Mormon wishes would not be granted. Senators

and representatives thought the designated area was too large, the population too small, and the Mormon Church too deviant.

Statehood was impossible to achieve, so the Mormons wisely opted for territorial status. On September 9, 1850, Utah Territory was created, as part of the legislation labelled the "Compromise of 1850." Although not as ambitious as the State of Deseret, the Territory contained all of present-day Utah, most of Nevada, western Colorado, and the southwestern corner of Wyoming. The statute provided for a governor, a secretary, and three territorial supreme court justices—all federally appointed—and a two-house legislature—elected by the Territory's inhabitants. The majority of the first territorial supreme court and the secretary were staffed by eastern Non-Mormons. However, the Mormons controlled the Assembly and, more important, Brigham Young was named the first governor. The initial division of offices in the territorial government set the stage for testing whether the local "minority" could prevail over the federal "majority."

Minority Freedom from Majority Rule

The Mormons were able to achieve a relatively high degree of freedom from the federal government by controlling the executive and legislative branches of the Territory and bypassing the judiciary. But the prospect of *any* outsiders governing the Mormon colony in the face of *any* shared Mormon political power made conflict manifest, and by 1851, Gentile grievances were in Congressional hands.

Utah Territory Supreme Court Justice Perry E. Brocchus of Alabama documented what he thought were scurrilous blasphemies of American government. He noted that the Saints had every intention to avoid any contact and control by Gentiles and that Brigham Young encouraged excessive behavior toward that end. On July 24, 1851, most Mormons gathered to celebrate the fourth anniversary of the founding of their last zion. On this occasion, according to Brocchus, Governor Young

> denounced, in the most sacrilegious terms, the memory of the illustrious and lamented General and President of the United States, who has lately gone to the grave, and over whose tomb a nation's tears have scarcely ceased to flow. He exclaimed, *"Zachary Taylor is dead and gone to hell, and I am glad of it!"* and his sentiments were echoed by a loud amen from all parts of the assembly. Then, rising in the excess of his passion to his tiptoes, he vociferated, *"I prophesy, in the name of Jesus Christ, by the power of the priest-*

hood that is upon me, that any other President of the United States, who shall lift his finger against this people, will die an untimely death and go to hell."[29]

Brocchus later addressed a convocation of the Saints, defending the United States government and criticizing Young as governor. Brigham Young arose with a rage, denounced the jurist, and suggested certain governmental leaders might have their throats cut. The crowd lunged forward "like hyenas" to claw Brocchus to death, but he escaped. Shortly thereafter, Brocchus, Supreme Court Chief Justice Lemuel Brandebury, and Secretary B. D. Harris fled Salt Lake City.

The Mormons defended their honor. They believed that they had been sent unqualified appointees, and that Brocchus, in particular, had been insulting. The day of his near-catastrophe, he had provoked the community by implying improprieties on the part of Mormon women. According to Jedediah Grant, mayor of Salt Lake City and one of Brigham Young's closest confidants, the judge had remarked, "It reminds me, *by the way,* that I have commission from the Washington Monument Association, to ask of you [the ladies] a block of marble, as the test of your citizenship and loyalty to the government of the United States. But in order for you to do it acceptably, you must become virtuous, and teach your daughters to become virtuous, or your offering had better remain in the bosom of your native mountains."[30]

Disputes with non-Mormon territorial officials continued until they reached a climax in 1857. Two years earlier three vociferously anti-Mormon jurists were appointed to the Utah Supreme Court. The Assembly responded to their actions by vesting concurrent jurisdictional powers in the lesser courts, depriving the judges of legal business. Especially piqued was Justice W. W. Drummond, and his resignation letter to Congress set off a national series of complaints against the Saints. Drummond accused Young of treasonous dictatorship, the subversion of American law, and the conspiratorial murders of an army captain, a former territorial secretary, and a territorial supreme court justice. Although Drummond was later deemed an unreliable source, and other rumors were never substantiated, President James Buchanan reacted to the reports by sending 2,500 troops under the command of Albert Johnston to depose Brigham Young and to restore federal control over Utah. On the eve of the Civil War, sharing few other convictions, the North and the South could agree on the "Mormon Problem."

The Mormons panicked. Another army, sanctioned under American government, was marching to enslave and despoil them. Brigham Young declared martial law, exhorted his followers to repel the invaders, and

issued a Mormon Declaration of Independence. Young proclaimed:

> CITIZENS OF UTAH: We are invaded by a hostile force, who are evidently assailing us to accomplish our overthrow and destruction.
>
> For the last twenty-five years we have trusted officials of the government [United States], from constables and justices to judges, governors, and Presidents, only to be scorned, held in derision, insulted, and betrayed. . . .
>
> The issue which has thus been forced upon us compels us to resort to the great first law of self-preservation, and stand in our own defence, a right guaranteed to us by the genius of the institutions of our country, and upon which the government is based. Our duty to ourselves, to our families, requires us not to tamely submit to be driven and slain, without an attempt to preserve ourselves; our duty to our country, our holy religion, our God, to freedom and liberty, requires that we should not quietly stand still and see those fetters forging around us which are calculated to enslave, and bring us in subjection to an unlawful military despotism, such as can only emanate, in a country of constitutional law, from usurpation, tyranny, and oppression.[31]

The Utah war commenced.

Mormon military plans called for guerilla operations to delay Johnston's advance while the main body of Saints retreated into the desert, destroying everything as they left. The anticipated invasion generated Mormon anxieties and anger—anger that they vented upon a hapless wagon train of approximately 140 Arkansas and Missouri immigrants bound for California. On September 7, 1857, the unsuspecting pioneers, frightened by Indian raids, were lured out of their camp near Cedar City by fanatical Mormons who brutally murdered all but seventeen children.[32]

The Mountain Meadows Massacre enraged the nation. Many demanded Mormon blood in retribution. But federal officials desired to avoid confrontation, seeking instead an expedient compromise. Colonel Thomas Kane and new governor-designate, Alfred Cumming, sought out Brigham Young for negotiations. At a conference in April of 1858, the Mormon leaders agreed to acknowledge the legitimacy of American laws, government, and officials in return for a general pardon issued by President Buchanan.

Although the Utah War was limited to no more than several guerilla skirmishes before it was quickly terminated, the Saints still implemented their scorched-earth policy. They evacuated Salt Lake City so completely that when the army arrived, only a guard (with instructions to burn the city if the army stayed) could be found. The army did not remain; as it left, the territorial officials entered the city, and the Mormons returned.

The generation of Mormons who lived in the years following the Utah War enjoyed outstanding economic successes. They strove for and nearly achieved self-sufficiency. During the same decades, the federal government, from Congress through the territorial officials, tried to establish political and social control in Utah Territory. Legislation and litigation were directed toward the objectives of eliminating polygamy and weakening the political power of the Church of Jesus Christ of Latter-day Saints. Elimination of polygamy became the price necessary for Utah to reach statehood; the political power of the Church would remain.

The federal Anti-Polygamy Act of 1862 embraced both of these objectives. All persons practicing polygamy were deemed guilty of bigamy and subject to a fine not exceeding $500 and a jail term of not more than five years. All territorial statutes countenancing polygamy were voided. In addition, no association with religious purposes could acquire more than $50,000 worth of real property; all other property would be forfeited to the United States. The substance of this law constituted a direct attack upon the church and religion of the Mormons.

Rather than challenge the constitutionality of the Act, the Mormons merely circumvented it, adopting a policy of *de facto* nullification. The church permitted only one civil marriage; the others came to be termed "sealings." Church property was simply deeded over to Brigham Young. He kept it in perpetuity, and when he died, much of it eventually was vested in the name of his successor, John Taylor.

Thwarted in that effort to bring Utah into conformity with national norms, Congress debated, and sometimes enacted, alternatives: attempting to prohibit church leaders from performing marriages, placing the Mormon militia directly under federal officers, authorizing a Utah Commission to supervise the registration of voters, excluding any who practiced or believed in the practice of polygamy. Eventually, Congress (the American majority) registered victory. After Brigham Young's death in 1877, with dissent surfacing from within, the Mormons bowed to the wishes of the federal government.

Wilford Woodruff, then age 80, assumed the presidency of the church in 1887. Woodruff and many Mormons were tired of the polygamy controversy. Perhaps clearing away the "national stigma" might allow his followers to live in peace and in control of their own institutions. On September 24, 1890, Woodruff issued the Manifesto. No longer would polygamy be encouraged as a church doctrine; the Saints would live within American law. Four years later, Utah entered the Union, decades after the neighboring states of Nevada and Colorado.

An accommodation had been reached. After a generation of persecution and counter-reaction Utah had achieved home rule—a secure

Mormon enclave within the American Union. It was not a total victory for the Mormons. But they had realized a zion, semi-free of federal interference, in part sanctioned by the very system they had for so long considered their mortal enemy.

The Idea of "Freedom from Government" in Our Times

The desire for freedom from "oppressive" government, as they depicted it, led Mormons to commit extreme actions during their early history in the nineteenth century. They sought and obtained local hegemony so that they could practice their religious beliefs and apply their economic and social ideologies. They sometimes claimed that they were reliving basic tenets of an American heritage grounded in the Declaration of Independence.

Of course the Mormons were not the only Americans who have expressed desire for freedom from majority rule. The history of the United States is checkered with examples of individuals and groups who planned, and sought, and sometimes achieved greater degrees of liberty than the majority (the government) might have intended to allow. The delicate balancing of majority and minority rights and interests remains a most central challenge to those who would make and those who would apply public policy.

In our own times we have seen a variety of examples that indicate anew that no magic formula ever has been devised by which easy, simple reconciliation of such divergent interests may be attained. To free themselves from oppressive application of local laws, and to bring their real circumstances into harmony with the theoretical (and nationally codified) rights presumably guaranteed all persons in society, black men and women engaged in passive resistance to unfair laws and to laws applied unfairly. Under leaders like Dr. Martin Luther King, Jr., using techniques of civil disobedience and, at times, more dramatic methods, American blacks educated majority white Americans by demonstrating their desire to be free from oppression as they sought remedies for their grievances within the structures responsive to majority rule. In so doing, they established patterns that other minorities in American society have followed as they have sought freedom from what they consider suppression of their rights by the majority in society.

Indeed, we have lived and are now living in an era in which attention to minority concerns has reached its fullest development in the history of the Republic. Native Americans, Chicanos, homosexuals, and the largest minority (technically, the numerical majority), women, along

with many other groups, all have sought relief from social repression that has deprived them of rights proclaimed as inalienable in the Declaration of Independence. Our era, which has witnessed technological advances, such as television, that seem especially designed to bring conformity and uniformity throughout American society, also has seen the flowering of, and partial realization of, articulated demands for recognition and protection of minority rights.

The government, in the hands of the majority, has not been unresponsive. If local and state codes of law are repressive, either in themselves or in their execution, then federal authority has been interposed to correct the situation. While Presidents and Congress sometimes have wielded that federal authority, special attention can be awarded the Supreme Court. Led by civil libertarians like Earl Warren, and Hugo Black, and William O. Douglas, the Court has struck major blows at political and social and economic injustices. *Brown* v. *Board of Education, Baker* v. *Carr, Gideon* v. *Wainwright,* and numerous other determinations by the Court identified and secured rights and liberties for individuals and minorities.

Thus federalism, a concept fundamental to the Founders' structuring of the American Republic, has continued to provide routes through which grievances could be remedied. But there are illustrative examples to warn us that the federal government, interposing itself to correct inequities in state and local circumstances, is itself a flawed instrument. Post-Watergate Americans have come to understand that the very instruments by which individual and group rights are to be secured have been employed to violate the rights they were meant to monitor and protect.

The list is long and depressing: invasion of privacy, sabotage of political processes, planned assassinations, harassment of citizens, computerized "files," infiltration of organizations, burglary, theft, laundered monies, doctored "evidence"—the examples of misconduct by officers and agents of the Federal Bureau of Investigation, the Central Intelligence Agency, and others, continue to be revealed.

To take only one, and not the most dramatic, circumstance: ever since its creation as an agency, with the constitutional amendment allowing a federal income tax, the Internal Revenue Service has depended upon American citizens to police their own taxation. It has concentrated on a very limited enforcement process, since most citizens have volunteered their taxes and their time to calculate those taxes by attempting to follow correctly an increasingly complex, often ambiguous, and sometimes quite unfair code of tax laws. What, then, can be the response when citizens are apprised of the fact that the Internal Revenue Service was used for political purposes, and its functions distorted at

the direction of officers in the highest positions in the federal government? How willingly will Americans wish to continue their volunteer "responsibilities" as taxpayers if they lose confidence in the government their taxes support? How free from "government as tax collector" will they wish to become?

The loss of confidence in government by American citizens constitutes a peril of first magnitude. It is exhibited against almost all levels of government—local, state, and federal—and threatens the values and concepts upon which the Republic was founded, two hundred years ago. It is composed of both substantive and procedural concerns, but the latter are the more serious. We have, after all, lived through other times when it seemed that the then elected officers of government were incompetent to devise wise and fruitful policies appropriate for the times. If only the substance of policies is challenged, or debated, the process presumably allowed correction with replacement of unwise officers, as near in time as the next election.

Loss of confidence in procedures, however, offers less pleasant projections. Some Americans believe today that no group of officers, and no political party, is competent to care for society's needs. Others are distressed at the knowledge that those who hold positions in government themselves scorned the constitutional processes they swore under oath to defend. Unless that trend is reversed, the hemorrhaging of confidence from constitutionally structured processes inevitably will lead to ignoring of rules and laws in a wish to be free from government that can command little loyalty and less respect. Such actions, too often in human history, have generated increasing insistence by those in authority that "the law" must be followed—the beginnings of justification for tyrannical rule.

What then of the future? How will the values and concepts of the Revolutionary generation fare in the decades to come? There is, of course, no answer—yet. But as episodes that illustrate the desire of Americans to be free from oppressive government help us to understand the strengths and weaknesses of a nation committed to the ideals of the Declaration of Independence, so they may also enable us to predict that such desires will continue to provide substantial challenges to future generations.

Persistent Questions Related to the "Right to Liberty"

- What values are found in the desire of Americans to resist their own governing institutions?
- Will the American tradition of achieving freedom from government help or hinder the search for solutions to complex contemporary, and future, problems?
- Would substantial decentralization of governmental authority in America enhance or injure the protection of minority rights?

FOR FURTHER READING

On the Event:

Anderson, Nels. *Desert Saints: The Mormon Frontier in Utah.* Chicago: University of Chicago Press, 1942.

Arrington, Leonard J. *Great Basin Kingdom: Economic History of the Latter-Day Saints, 1830-1900.* Lincoln: University of Nebraska Press, 1966.

Brodie, Fawn M. *No Man Knows My History: The Life of Joseph Smith, the Mormon Prophet.* New York: Alfred A. Knopf, 1946.

Brooks, Juanita. *The Mountain Meadows Massacre.* Norman: University of Oklahoma Press, 1963.

Mulder, William, and Mortensen, A. Russell, eds. *Among the Mormons: Historic Accounts by Contemporary Observers.* Lincoln: University of Nebraska Press, 1973.

O'Dea, Thomas F. *The Mormons.* Chicago: University of Chicago Press, 1957.

Stegner, Wallace. *The Gathering of Zion: The Story of the Mormon Trail.* New York: McGraw-Hill, 1964.

On the Value:

Clark, Walter Van Tilburg. *The Ox-Bow Incident.* New York: The New American Library, 1960.

Graham, Hugh, and Gurr, Ted Robert, eds. *The History of Violence in America.* New York: Bantam, 1969.

Hurst, James Willard. *Law and the Conditions of Freedom in the Nineteenth-Century United States.* Madison: The University of Wisconsin Press, 1971.

Veysey, Laurence, ed. *Law and Resistance: American Attitudes Toward Authority.* New York: Harper & Row, 1970.

FOOTNOTES

[1] United States. Declaration of Independence, July 4, 1776.
[2] Ray Allen Billington, *Westward Expansion: A History of the American Frontier* (New York: The Macmillan Company, 1969), p. 534.
[3] Joseph Smith to John Wentworth, March 1, 1842, in William Mulder and A. Russell Mortensen (eds.), *Among the Mormons: Historic Accounts by Contemporary Observers* (Lincoln: University of Nebraska Press, 1973), p. 12. Used by permission of Alfred A. Knopf, Inc. *Among the Mormons* is one of the most comprehensive and reliable collections of Mormon documents available in printed form. Hereinafter reference to this work will be denoted as *Mormon Accounts.*
[4] *Book of Mormon,* Mormon 2:26.
[5] *Ibid.,* Moroni 7:35.
[6] Leonard J. Arrington, *Great Basin Kingdom: An Economic History of the Latter-Day Saints, 1830-1900* (Lincoln: University of Nebraska Press, 1966), p. 3.
[7] Letter of Judge Stephen S. Harding, February, 1882, in *Mormon Accounts,* p. 42.
[8] Lucy Mack Smith, *Biographical Sketches,* 1845, in *ibid.,* p. 47.
[9] Fawn M. Brodie, *No Man Knows My History: The Life of Joseph Smith, the Mormon Prophet* (New York: Alfred A. Knopf, 1946), p. 87.
[10] *Ibid.,* p. 102.
[11] Mulder and Mortensen in *Mormon Accounts,* p. 67.
[12] Journal of Joseph Smith, March 24, 1832, in *ibid.,* pp. 66-67.
[13] Oration delivered by Mr. S. Rigdon, on the 4th of July, 1838, in *ibid.,* p. 95.
[14] *Missouri Intelligencer and Boon's Lick Advertiser* (Columbia, Missouri), August 10, 1833, in *ibid.,* p. 80.
[15] *Western Star* (Liberty, Missouri), September 14, 1838, in *ibid.,* p. 96.
[16] Brodie, pp. 229-230.
[17] Governor Lilburn W. Boggs to General John B. Clark of Fayette, Howard County, Missouri, October 27, 1838, in *Mormon Accounts,* p. 103.
[18] Joseph Young's Recollection of the Massacre at Haun's Hill, in *ibid.,* pp. 105-106.
[19] *Quincy Whig* (Quincy, Illinois), October 17, 1840, in *ibid.,* p. 115.
[20] Billington, p. 538.
[21] Brodie, p. 341.

[22] *Ibid.* The Mormon Church later divided over the issue of polygamy, one side maintaining that Brigham Young, not Joseph Smith, formulated the ill-fated vision. Historical evidence, however, gives weight to the aforementioned Smith version.
[23] Billington, p. 538.
[24] Isaac Scott to Calvin and Abigail Hall, June 16, 1844, in *Mormon Accounts*, p. 145.
[25] Dr. Thomas L. Barnes to Miranda Barnes Haskett, November 6, 1897, in *ibid.*, p. 150.
[26] Brodie, p. 397.
[27] Mulder and Mortensen in *Mormon Accounts*, pp. 163-164.
[28] Brigham Young to President James Knox Polk, August 9, 1846, in *ibid.*, p. 209.
[29] Judge Perry Brocchus to President Millard Fillmore, September 20, 1851, in *ibid.*, p. 251.
[30] Jedediah Grant to James Gordon Bennett, *Herald* (New York City, New York), March 9, 1852, in *ibid.*, p. 258.
[31] Brigham Young's Declaration of War, September 15, 1857, in *ibid.*, pp. 297-298.
[32] Juanita Brooks, *The Mountain Meadows Massacre* (Norman, Oklahoma: University of Oklahoma Press, 1963).

CHAPTER FOUR

Opportunity, Achievement, and Corporate Power in America

CASE STUDY: THE STANDARD OIL COMPANY

C. Joseph Pusateri

TO SECURE THESE RIGHTS: THE PURSUIT OF HAPPINESS

Americans in the generation that made and explained the Revolution incorporated into their ideology borrowings from many political theorists, but perhaps from none more fully than John Locke. Locke's writings had instructed provincial Americans in their natural rights, identified as including the right to life, and to liberty, and to property. But through a process of restatement, principally by Jefferson's fellow Virginian, George Mason, Locke's triad was altered to emerge in its American form as we know it in the Declaration of Independence: life, liberty, and the pursuit of happiness.

Thus the word property, *extended into the phrase* the pursuit of happiness, *was broadened in its implications and opened to shifting interpretations extending in directions far beyond the narrower confines of its original form.* Pursuit *then might have meant a professional "calling"—such as to pursue the law, or medicine (as historians have instructed us). But other Americans, in succeeding generations, placed emphasis on the total phrase and especially on its final word,* happiness. *In that way, spiritual and psychological and many other personal goals could be accommodated within the natural right.*

Yet property was not ignored, and many, perhaps most Americans, have translated "pursuit of happiness" into concrete terms that include, in varying measure, the struggle for or possession of material wealth. Property has not, by itself, satisfied definitions of pursuing happiness, but definitions of pursuing happiness customarily have seemed incomplete without inclusion of property.

To secure the inalienable right to the pursuit of happiness, then, governments in America, at all levels, have fashioned laws and processes providing opportunities for individuals to achieve happiness which often is equated with property. Property might be owned, managed, invested, exploited, given, sold, bequeathed, combined, consumed—and many other things—under ever increasingly complex codes. As succeeding generations saw wisdom in so doing, those codes were altered and modified in response to changing circumstances and aspirations.

From the beginning, however, a dualism in concepts and values was ever present. The pursuit of material wealth, whether defined as that necessary for minimal maintenance of life, or modest and moderate, or extended even so far as to satisfy greed, was an inalienable individual right, which governments were to secure. But inevitably, one man's or one woman's success in the pursuit of material wealth closed off opportunities for others to attain happiness. Thus the actions of some persons deprived others of their rights. The dilemma is inherent in the values and concepts; at best, balancing of individual and society's rights must in this, as in so many other aspects of social ordering, challenge those who develop and those who administer public policies.

The response to that challenge has been an ever-changing experience. Increasing numbers of Americans have sought changing forms of wealth, from the agrarian and limited commerce of Jefferson's day to the industrial and finance capitalism of the present era. And, belatedly, Americans have come to understand that their material resources are finite and not inexhaustible.

Prior to the Civil War, those who were accorded the opportunity to achieve material happiness only infrequently were challenged to consider the inherent contradictions between society's and individuals' interests. But in the last decades of the nineteenth century that contradiction no longer could be masked or ignored. America stood at a dividing point, and the pursuit of happiness demanded new definition.

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In his selection of a case study to explore and describe the difficulty of applying the values associated with "the pursuit of

happiness." Pusateri chose episodes concerned with the first American "trust"—the Standard Oil Company of Ohio—its architect, John D. Rockefeller, and the public antitrust laws. The reader will encounter, implicitly and explicitly, in those episodes, an illustrative example of collision between differing assumptions originating in the promise of the Declaration stipulating the right to pursue happiness.—Carl Ubbelohde

American Attitudes Towards "Competition" and "Monopoly"

Traditionally, the functioning of the American economy has centered upon the contributions of individuals following their own interests and seeking their own goals. Producers and consumers have reacted to each other's tastes and aspirations and thereby allocated the available resources of the nation. The economy thus became the sum product of the acts of individuals, past and present. In the last century, however, the most successful of these individuals gained prominence and exercised their influence collectively rather than singly, by working through the legal and artificial person of the modern corporation. This development, whatever its benefits in efficiency of output and costs, was not congenial to many Americans, who saw the new developments as closing too many doors to material achievement formerly open to enterprising men and women acting on their own initiative, and not aligned with larger organizations.

The ideal of an equal opportunity for each citizen to acquire and to operate his or her own business died hard. Dating back to the colonial period, ease of entry into small business had been a most important difference between the Old World of Europe and the New World in America. Skilled workmen had readily gone into business for themselves in a colonial Massachusetts, unhampered by difficulties in securing official permission or guild acceptances. But all that appeared to be changing by the late nineteenth century, and to many Americans it seemed perfectly obvious that democracy could not survive when a society was dominated by what they regarded as "anonymous economic units." For them "the anonymous man of modern industrialism" was really no man at all.[1]

To a certain extent, the responses to the rise of big business in America were reflective of attitudes and values which are usually associated with pre-industrial society. In that sense they testified to the continuing strength of the agrarian spirit in America. While manufacturing was hardly an unknown activity in our colonial experience, market and transportation limitations dictated that factories had to be widely dispersed rather than geographically concentrated and the strength of their influence was not great. Meanwhile, the advocates of agrarian values spoke with considerable authority.

No stronger advocate of the latter spirit could be found than Thomas Jefferson. In his *Notes on Virginia* he preached the gospel of agrarianism. Writing before the Declaration of Independence, Jefferson argued that Americans should confine their activities to cultivating the soil and let Europe involve itself in manufacturing: "While we have land to labor then, let us never wish to see our citizens occupied at a work bench. . . ."[2]

But the agrarian Jefferson was not to remain so all his life. Changing economic conditions altered his views on manufacturing, so much so that he could write Benjamin Austin in 1816: "You tell me I am quoted by those who wish to continue our dependence on England for manufactures. There was a time when I might have been so quoted with more candor, but within the thirty years which have since elapsed, how are circumstances changed!" He could by 1816 write: "We must now place the manufacturer by the side of the agriculturist," and he could add: "Experience has taught me that manufactures are now as necessary to our independence as to our comfort; and if those who quote me as of a different opinion, will keep pace with me in purchasing nothing foreign where an equivalent of domestic fabric can be obtained without regard to difference of price, it will not be our fault if we do not soon have a supply at home equal to our demand, and wrest that weapon of distress from the hand which has wielded it."[3]

The views that Jefferson came to express were, of course, those held much earlier by his former antagonist, Alexander Hamilton. The *Report on Manufactures*, submitted by Hamilton as Secretary of the Treasury to Congress in December 1791, was a classic statement in defense of industrialism and of government assistance for nascent industries. Manufactures promote the public good, argued the aggressive Treasury head, because they harness the artificial force of mechanization to aid man, because a division of labor is created which results in heightened efficiency, because new employment is provided furnishing "greater scope for the diversity of talents," and because the agricultural sector of the economy benefits from new markets for its produce and for the natural resources of the nation. Hamilton had concluded "that a manufacturing

interest would not only be socially useful but would form an indispensable part of America's harmonic economic development."[4]

Interestingly, some critics of Hamilton's *Report* were manufacturers themselves. Small artisans and shopkeepers approved of the general applause for manufacturing but feared that Hamilton's relish for a government-business alliance and its promotion would result only in creating a steamroller against which they themselves would not be able to contend—the large scale, incorporated, heavily capitalized manufacturing enterprise. Such organizations, in the words of one critic, would "inevitably destroy the infant manufactures of our country, and consign the useful and respectable citizens personally engaged in them to contempt and ruin."[5] Nevertheless, Hamilton built better than he knew, for his Jeffersonian opponents would one day occupy his ideological position. "His philosophy remained a basic ingredient in American tradition, though the idiom was to change from time to time."[6]

It was not, however, so much the heritage of America's early agrarian spirit that brought Americans to protest against the emergence of corporate combinations after the Civil War. It was instead a long tradition of commitment to the principle of free competition as the perfect economic regulator and vigorous opposition to the destroyer of that competition—monopoly power. For Americans, indeed for anyone claiming an Anglo-Saxon heritage, the word "monopoly" carried more than simply economic connotations. There were social, political, even emotional attachments to the word.

The United States has given more sustained attention to the issues of competition and monopoly than any other nation. Problems involving freedom in the marketplace have influenced our public policies since the founding of the Republic. To most Americans, little trained in economics, the definitions of "competition" and "monopoly" seem clear enough. Competition implies many buyers and sellers in a market with no single firm or individual able to control price, demand, or supply. On the other hand, the monopolist is the only seller of a particular commodity for which there is no close substitute and the market is his to command.[7]

Obviously, this clear distinction does not describe a real market situation where neither pure competition nor pure monopoly exists. Each market situation is a complex compound of varied forces. Nevertheless, Americans ascribe value to the concept of competition as the ruling force, believing "that producers and sellers put forth their best efforts when threatened by effective rivals; that the economic desires of society are fulfilled when no individuals or groups within the marketplace possess the power to exploit; in short, that competition as a market force compels the best possible economic results."[8]

Anti-monopoly (or, as Americans came to refer to it, antitrust) sentiment dated from sixteenth-century English origins. The word "monopoly" itself was first used by Thomas More in 1516, and the first recorded common law case involving the monopoly issue was decided in 1599. The case, *Davenant v. Hurdis* (also referred to as *The Merchant Tailors'* case), involved a rule passed by the London tailors' guild in 1571. It required each merchant belonging to the guild and having cloth finished by outside labor to have at least half the work done by guild members. But Davenant, a merchant member, refused to obey the rule and later refused to pay the fine imposed by the guild. When the guild ordered Hurdis to take from Davenant goods equal in value to the fine, Davenant charged him with trespass. Davenant's attorney, the great Sir Edward Coke, argued that the guild rule was illegal since it tended towards the creation of a monopoly. The court accepted Coke's reasoning, holding that "a rule of such nature as to bring all trade or traffic into the hands of one company, or one person, and to exclude all others, is illegal."[9]

A quarter of a century later came what has been termed "the high watermark of English anti-monopoly policy." The Statute of Monopolies passed by Parliament in 1624 and the first major legislation on the subject of monopoly put an end to the granting of private monopolies by the Crown. It "reflected the general aversion of the law to monopoly based on special privilege."[10] Such sentiments would not be long in making the transatlantic crossing to North America.

Monopolies were opposed with as great a vigor in the English colonies as they had been in the mother country. This was so because a principal reason for colonists leaving England had been their aversion to unjustified privilege, and because monopoly power was the antithesis of the individualistic spirit characteristic of life in the new land. To a substantial extent this spirit was the product of the favorable economic condition prevailing in colonial America, and it soon became "part and parcel of the nation's democratic faith." Both religion and philosophy buttressed the belief. Evangelical Christianity placed its emphasis on personal regeneration; and transcendentalism, with its identification of the individual soul with God, served the same purpose.[11]

The word "individualism" itself was, appropriately, first coined in the English translation of Alexis de Tocqueville's *Democracy in America.* Of the Americans he observed, Tocqueville remarked: "They owe nothing to any man, they expect nothing from any man, they acquire the habit of always considering themselves as standing alone, and they are apt to imagine that their whole destiny is in their own hands." But while Tocqueville regarded such an attitude as a social danger, Americans

celebrated it as the ideal.[12] Ironically, the unintended result of the cult of the unrestrained individual would be to accelerate the forces of organization that would bring its era to an end. Such a possibility was not anticipated prior to the Civil War, however, as most businesses were forced by the period's economic restraints to operate as local enterprises. But with the rise of larger opportunities following the War, the new corporate manager found himself "in the favored position of operating in an economy dedicated to the idea of freely competing individuals, yet left unhampered by the ordinary restrictions. Under such auspicious circumstances, he soon outdistanced unorganized rivals in the race for wealth."[13]

It was not difficult for a John D. Rockefeller to announce, shortly after the beginning of the twentieth century, that "the day of individual competition in large affairs is past and gone" and that large-scale enterprise "has come to stay—that is a thing that may be depended upon."[14] He had had a good deal to do with the one age closing and the next beginning.

In colonial times American hostility to monopoly was not lessened by the fact that some of the most objectionable exercises of England's power on this continent were the practices and privileges of chartered royal trading companies. In a sense it could be argued that the depositing of the British East India Company tea in Boston harbor in 1773 was simply a more romantic than usual form for an antitrust action. It was also the legislature of colonial Massachusetts that decreed "there shall be no monopolies granted or allowed among us but of such new inventions as are profitable to the country, and that for a short time." Boston had also been the 1639 site of merchant Robert Keayne's legal chastisement on the grounds of charging extortionate prices. For demanding what was regarded as beyond a reasonable price for a bag of nails and various other items, Keayne was not only fined heavily but was very nearly excommunicated from the church as well.[15]

A number of states expressed the desire to see an anti-monopoly provision in the Constitution, and certainly the monopoly issue was raised when Hamilton proposed the chartering of the First Bank of the United States. It fell to the Jacksonians, however, to raise the monopoly issue most vigorously during the course of their war against the Second Bank of the United States. In the message accompanying his veto of the bill rechartering the Bank, Jackson warned: "In the full enjoyment of the gifts of Heaven and the fruits of superior industry, economy, and virtue, every man is equally entitled to protection by law; but when the laws undertake to add to these natural and just advantages artificial distinctions . . . to make the rich richer and the potent more powerful,

the humble members of society—the farmers, mechanics, and laborers —who have neither the time nor the means of securing like favors to themselves, have a right to complain of the injustice of their Government."[16] The veto message, more demagogic than economic, was an unsubtle attempt at the employment of long-standing American views on monopoly in a political campaign being carried on by Jackson against partisan enemies. The Bank was not a monopoly and it is questionable whether many astute followers of the President ever honestly thought it so.

There were other institutions besides central banks against which the cry of monopoly was also raised in ante-bellum America. One of the most unpopular of these was the exclusive right to operate steamboats on the waters of New York State and in the West won by the partnership of Robert Livingston and Robert Fulton. In March, 1824, Chief Justice John Marshall, speaking for a unanimous Supreme Court of the United States, struck down the steamboat monopoly in his *Gibbons v. Ogden* opinion. Unlike most Marshall decisions, this one met with great popular approval as newspapers all across the country praised it as "profound, masterful, and farsighted." It had freed American commerce from the grip of special privilege.[17]

Somewhat the same fears were being expressed regarding corporations in general as were being voiced against the Livingston-Fulton steamboat monopoly. The view that corporations were somehow evil in themselves stemmed from our English and colonial heritages. Corporations and their predecessors, the joint stock companies, came into existence only by special actions of political bodies including the King himself. The special consideration involved in granting corporate privileges to private individuals formed together as an artificial entity smacked of public favoritism and seemed to violate our tradition of equality of opportunity.

When corporation charters, following the Revolutionary War, continued to be awarded by special acts of state legislatures, suspicion also continued unabated. Between 1783 and 1801 alone almost 350 business corporations were created within the United States to participate in the surge of the new nation's economy.[18] Complicating the issue was the fact that, overwhelmingly, the corporations receiving charters in these years and those shortly afterwards could be classified in the public service or utility category. They provided what economists term "social overhead capital," turnpikes, bridges, canals, and water systems; and because they operated within the public sphere and supplied necessary services, it was not uncommon for them to receive monopoly privileges of one type or another as part of their franchise.

The generous state authorities were also not unmindful of the political

influence of many of the individuals involved in the fledgling enterprises when these same liberties were bestowed. Nevertheless, influence or not, many would-be corporations were forced to invest considerable time and money in convincing state legislators that their charter requests should be granted. The promoters of the Delaware and Raritan Canal Company, for example, saw two years of work and some $3,000 lavished on the New Jersey legislature before a charter was finally secured.[19]

Given such circumstances, it was not surprising that many Americans regarded the corporation as a new threat to democracy. Only a handful of citizens could afford the investment required to take advantage of the corporate form. The issue thus became one of deciding upon a public policy towards the corporations. Some, particularly those radical Jacksonians known as the Locofocos, urged the destruction of all such devices. They claimed that all specially chartered enterprises were "monopolies, inasmuch as they are calculated to enhance the power of wealth, produce inequalities among the people, and to subvert liberty." In the same vein it was contended: "To have the land scattered over with incorporated companies, is to have a class of privileged, if not titled, nobility."[20]

The corporation was not, of course, without its vigorous defenders. From the judicial bench John Marshall played that role in decisions such as the one rendered in the Dartmouth College case. Daniel Webster, who had in fact appeared as attorney for Dartmouth College in that litigation, likewise proved a champion of corporate ventures. Recognizing that the corporation usually represented significantly larger accumulations of capital than either proprietors or partnerships, he argued against the popular fears of its greater size. Webster contended that there were no ideas more unfounded and disreputable "than those which would represent capital, collected, necessarily, in large sums, in order to carry on useful processes in which science is applied to art, in the production of articles useful to all, as being hostile to the common good, or having an interest separate from that of the majority of the community. All such representations, if not springing from sinister design, must be the result of great ignorance, or great prejudice."[21]

The compromise finally arrived at was the enactment by the states of general incorporation laws. Under these laws state officials were authorized to issue charters to any qualified applicants without acts of the legislature being required. In effect, the process had been democratized and some of the old complaints about the corrupt methods used to secure privileged franchises—monopolies—could no longer be sustained. The first statutes of this type were passed in Massachusetts in 1809 and in New York in 1811, but it was not until after the Panic of

1837 and the long depression following that crisis that a substantial number of states followed suit. Not until 1875, however, did the number of states featuring general incorporation laws exceed those still chartering by special legislative acts.[22]

Given this heritage of opposition to monopoly and centralized power, it was inevitable that Americans adversely affected by the sweeping economic transformation taking place following the Civil War would react angrily. As historian John Tipple has pointed out, the large industrial corporation was out of place in a society whose "institutions had been built around the social and political concept of the free individual." It quickly became clear that "as an artificial person created by charter and comprising many individuals and their wealth, the corporation was infinitely greater in size and power than the isolated individual about whom American society had been conceived." As a result an immediate question was posed. "What was to be done with such a monster? Either the corporation had to be made to conform to American institutions and principles or those institutions and principles had to be changed to accommodate the corporation."[23]

Case Study: The Standard Oil Company

On the afternoon of October 12, 1898, two men faced each other in the New Amsterdam Hotel in New York City. They had not seen each other in some years and now they found themselves, as they had so often in the past, on opposite sides in a legal proceeding. The slighter in stature and somewhat younger of the two men approached the other with hand extended in a gesture of friendship.

"How are you, George? We are getting to be gray-haired men now, aren't we? Don't you wish you had taken my advice years ago?"

The older of the two, pointedly ignoring the proffered hand, replied bitterly: "Perhaps it would have been better for me if I had. You have certainly ruined my business, as you said you would."

Surprised at the vehemence of the reply to his greeting, the younger man drew back, denying the charge. The attacker persisted, however: "But I say it is so. You know well that by the power of your great wealth you have ruined my business, and you cannot deny it!"

Seeing no point in continuing what he considered to be a hopeless conversation, the first man turned away, commenting to the small crowd of onlookers as he left the room that there was not one word of truth in the accusations.

The incident was closed only for the moment. Four days later—

Sunday, October 16—a description of the encounter was printed, amid a full page article detailing the older man's charge, in one of the nation's most widely read newspapers, *The New York World*. *The World* headlined its account with the banner: "How I Was Ruined by Rockefeller." The author of the story, the angry attacker during the New Amsterdam incident a few days before, was George Rice of Marietta, Ohio. His antagonist was one of the most powerful and feared men in the United States, John Davison Rockefeller, creator of and dominant force in the globe-straddling Standard Oil empire.[24]

The twin stories of Rice and Rockefeller reveal much of the developing history of a key industry in the American economy, an industry that has been marked by controversy from its inception in 1859 until our present-day headlines of Arab oil embargoes and rising energy costs. Yet Rice and Rockefeller also symbolize much more. In many ways they stand as personal embodiments of two converging forces in the evolution of the nation—the concern and the passion to maintain equality of economic opportunity for all Americans on the one hand, and the desire and drive to amass the most stupendous material achievements possible in the most efficient manner available on the other. Opportunity and achievement—two goals between which a choice was often forced because frequently one could not be sought without sacrificing a measure of the other.

For many Americans, freedom itself has come to be defined in primarily economic terms. One contemporary scholar has written that in large part freedom today is "the right to earn a living in the way of one's own choosing, to launch an enterprise, to save and invest, to own property, and, above all, to share in the income and wealth that a progressive economy generates."[25]

For the individual who takes utmost advantage of his or her granted opportunity, there has always been a special kind of popular approval. Fellow citizens have looked upon such persons with particular admiration. They have become legendary heroes—the self-made woman or man. As Irvin G. Wyllie has stated, the self-made man "represents our most cherished conceptions of success, and particularly our belief that any man can achieve fortune through the practice of industry, frugality, and sobriety."[26]

Such a figure was George Rice. He was born in Swanton Falls, Vermont, just four miles below the Canadian-American border, in 1835. He had entered the infant oil business at a relatively early age, first operating as a producer, owning oil well properties in the Pennsylvania fields of the 1860s. Then in the 1870s he switched the base of his operations to Ohio and took on the additional task of refining the crude

oil secured from his wells into kerosene, the principal petroleum product of that era. In 1875, he and Charles Leonard established the Ohio Oil Works on the banks of the Ohio River at Marietta. Two years later, Rice bought Leonard out and operated thereafter as a sole proprietor until he shut the plant down permanently in 1896.

His operations in the refining field were always relatively small scale. He once noted to a Congressional investigating committee that "The executive part of the business is done altogether by my family. One daughter keeps the books, another daughter does nine-tenths of the correspondence, and my son-in-law is the general manager." Rice himself claimed to tend to outside matters, meaning the marketing of his illuminating oil output.[27]

The world of George Rice was not to be a happy one, however. He sought his markets first in the Great Lakes region and later in the Southern states, but in each instance he found himself confronted by a truly formidable enemy—the overmastering competition posed by the operations of Rockefeller's burgeoning Standard Oil organization. Thus the long war between the two men began.

Standard Oil can be regarded as representing the second of the two influences in American economic life mentioned earlier—material achievement. In the two decades after its emergence on the petroleum scene, it transformed an industry marked by chronic excess capacity, instability, and general aimlessness into one of the cutting edges of an enormous American economic expansion. During the Rockefeller years the United States displaced Great Britain as the leading producer of manufactured goods in the world, a position that this country was never again to relinquish.

But one means to reach the end of material achievement lay in combination, the merging and consolidating of ever more and ever larger units of capital, labor, technology, and managerial expertise. Observers simplistically but accurately called the resulting combinations "big business," and a new age was ushered in. While there was little doubting the effectiveness of combination, there was also little doubting that the price that had to be paid lay in the sacrifice of a measure of the equality of opportunity held dear by the Founding Fathers. Gordon S. Wood has noted that the generation of the Declaration of Independence "who hoped for so much from equality assumed that republican America would be a community where none would be too rich or too poor, and yet at the same time believed that men would readily accede to such distinctions as emerged as long as they were fairly earned." It was said by some early writers that what was required was a "fundamental law, favoring an equal or rather a general distribution of property."

The very author of the Declaration itself, Thomas Jefferson, had written that an equal division of all inheritance would be the ideal corrective to "overgrown wealth," thereby, in the words of another Founding Father, "giving every citizen an equal chance of being rich and respectable."[28]

But combination implied inequality; it signalled that some would be rich and some would be poor whereas the Revolutionary generation had assumed "that equality of opportunity would necessarily result in a rough equality of station."[29] Nevertheless, and here is where a quandary of policy emerged, combination was also desirable because it allowed firms to attain greater efficiencies, taking advantage of economies of scale available only to the larger enterprises. If the savings were then passed on to customers in the form of lower prices, individual real incomes were thereby increased.[30] Of course, combinations might not pass on those savings to consumers; they might, indeed, find advantage in using their real power to fix prices artificially.

For John Rockefeller, however, the choice was not a difficult one as he unhesitatingly chose the path of combination and defended his choice vigorously all the days of his long life. As he readily admitted: "I have been frank to say that I believe in the spirit of combination and cooperation when properly and fairly conducted in the world of commercial affairs, on the principle that it helps to reduce waste; and waste is a dissipation of power."[31]

Rockefeller's willingness to adopt the strategy of combination, or cooperation as he often preferred to call it, was deeply tied to his own ingrained passion for order. An insight into his motivations can be gained by a brief look at his early life. He was born in western New York state in 1839. His father engaged in a variety of occupations including that of an itinerant patent medicine salesman. Even after his son had become enormously wealthy and a dominant force in a major industry, the father continued traveling a circuit of western towns, billing himself as "Dr. William Rockefeller, the Celebrated Cancer Cure Specialist." He was a flamboyant figure, powerful of physique, jovial in manner, aggressive in style, characteristics which, with the exception of the last, were not to be shared by his eldest son. The mother of the family, on the other hand, was a startling contrast. Infected with a deep puritan piety, she was frugal in her habits, strait-laced in her behavior, and a firm believer in stern discipline. The personality of the son closely resembled that of his mother though the vision and business shrewdness of his father were obviously not lost upon him.

Significantly, the uncertainties of John Rockefeller's early home life, frequent changes of residence and long paternal absences while "Doctor" Rockefeller rode the circuit, created in the young man a distaste for

uncertainty, a relishing of order and security, and a zeal for structuring each situation he might encounter. Most of all, he abhorred waste. His mother's favorite maxim, "willful waste makes woeful want," repeated endlessly it seemed, was not without its effect on her children.[32]

The Rockefeller family moved to Ohio in 1853, and it was in Cleveland two years later that John secured his first full-time employment, as an assistant bookkeeper for a local commission merchant. He threw himself into the new-found world of business with unbridled enthusiasm. He found his work place "delightful to me—all the method and system of the office."[33]

Four years later—the same year that saw the birth of the petroleum industry with Edwin Drake's successful well in Titusville, Pennsylvania—Rockefeller went into business for himself, forming a partnership to operate as a commission merchant in agricultural products and other miscellaneous goods. The firm, Clark and Rockefeller, was successful from the start and generated sufficient profits to allow the partners to look for other areas of potential investment. Petroleum offered such a possibility.

Eschewing the wildly speculative drilling and production phase of the petroleum industry, Rockefeller chose to invest in a refinery transforming the Pennsylvania crude oil into kerosene for illumination and a then small number of by-products. Refining required only a moderate amount of capital in order to begin operations, the demand for kerosene was expanding, and Cleveland, by virtue of its location on several rail lines and Lake Erie, was well suited to tap most western and many eastern markets. By 1863, when Cleveland boasted twenty refineries and was fast becoming the center of the rapidly developing industry, Rockefeller and Clark accepted the proposition of Samuel Andrews, an experienced and talented refiner, that together they build a plant. The first two men were to provide the necessary capital and Andrews the technical ability. By 1867, Rockefeller had dissolved the commission business and was concentrating completely on refining in a new partnership styled Rockefeller, Andrews, and Flagler, the immediate predecessor of the Standard Oil Company.

The history of Standard Oil in its Rockefeller years fell into three general, overlapping phases. The first of these, that of "combination," lasted from the inception of the corporation in 1870 until the end of the decade. The impetus for this phase stemmed from the then current conditions in the refining industry. With little capital required for entry into the petroleum industry, unrestrained competition was the rule. Prices fluctuated wildly; failures among producers and refiners alarmingly increased during the 1860s, and waste was everywhere. "Lack of

balance between functions was chronic: first production would outrun the throughput by refiners; then manufacturing capacity would exceed both current production of raw materials and the rate of consumption of finished products. Oilmen knew from bitter experience that their business was wasteful, risky, hazardous, and unstable."[34]

The response of the Standard Oil Company management, headed by Rockefeller, was in accord with the maternal dictum: willful waste makes woeful want. Following what its chief executive officer called "our plan," Standard Oil's policy was to eliminate the "wasteful" competition by "convincing" other manufacturers to either cease operations or to join the Rockefeller group in a loose alliance. Standard Oil possessed two substantial advantages in working its will on its competitors. It was the most efficient producer, and it had developed close ties with the railroads it utilized for its freight shipments. In order to reduce unit costs, the firm had begun to engage in a variety of auxiliary enterprises including the provision of its own chemicals, barrels, and transportation equipment. Further, the railroads proved quite willing to grant discounts or "rebates" on freight charges to an expanding operation like Standard Oil's, and such advantages could prove decisive in a competitive struggle.

Critics of the Rockefeller organization castigated it severely for its use of the rebate weapon. George Rice himself railed continually against "the combined hosts of the Standard Oil Company and its coconspirators, the railroads," who refused to allow him "the same rates, advantages, and facilities, in all respects, that the most favored or larger shipper has, in order that we may be able to compete in the general markets." But what was called "the utterly unscrupulous manipulation of railroad rates by the Rockefellers and their associates in order to destroy competition" was seen in a quite different light by Standard Oil executives.[35]

Rockefeller denied the charges of unfair competition. He claimed: "The profits of the Standard Oil Company did not come from advantages given by railroads. The railroads, rather, were the ones who profited by the traffic of the Standard Oil Company, and whatever advantage it received in its constant efforts to reduce rates of freight was only one of the many elements of lessening cost to the consumer which enabled us to increase our volume of business the world over because we could reduce the selling price."[36]

By 1879, Standard's combination effort had proved so successful that its alliance of companies controlled 90 percent of the refined petroleum sold in the United States. As important, "they showed a profound faith in the permanence of the industry, a belief not generally

held in years when the petroleum business was characterized by instability, rapid exhaustion of producing fields, and doubts about the appearance of new ones."[37]

In the second phase of its history, that of "consolidation," Standard Oil welded its loose alliance of companies into a tight amalgam, centrally controlled and rationally organized and administered. The device utilized to bring about the consolidation was the "trust," a system whereby Standard stock as well as that of other allied companies was placed in the hands of nine trustees who thus wielded a control over the combine which was complete and unquestionable. And with the control of the Standard Oil Trust, as the new structure was called, came control over the industry as a whole. Never before had Americans witnessed such an enormity of power centralized in so few hands.

Consolidation was completed with the perfection of the trust agreement in 1882. But even prior to that date, Rockefeller and his associates had begun a third phase of the organization's development—"vertical integration." In actual fact, Standard Oil had been emphasizing vertical integration since before its chartering as a corporation in 1870. As early as 1864, at Rockefeller's urging, it had begun making its own barrels and even purchasing its own tracts of land to provide the timber. In 1866 Rockefeller had recruited his younger brother William into the organization to set up a New York office specializing in the marketing of petroleum products for the export trade. In the years after the establishment of the Trust, Standard Oil faced a series of challenges from both foreign and domestic sources, challenges which led it to speed the process of integration. The bulk of Standard's market lay overseas, and the development of Russian oil competition prompted the creation of tanker fleets and foreign subsidiaries to meet the Russian threat in Europe and in Asia. In the United States the continual discovery of new crude oil fields and the appearance of independent refiners led Standard Oil, for the first time, into crude production on a massive scale and to control over a network of trunk pipelines linking the fields to the refineries. By the close of the 1890s, Standard Oil had completed the fashioning of a vast, vertically integrated structure involved in every aspect of its industry.[38]

The achievements of the petroleum industry in its Rockefeller years were indeed impressive. From a production of only a few barrels in 1859, output had soared to nearly sixty million barrels yearly by the turn of the century. The bulk of this crude oil production was refined into kerosene, the world's first inexpensive illuminant. As one historian of the industry has noted: "Few products associated with America have had so extensive an influence as kerosene on the daily living habits of so

large a proportion of the world's population." But illumination was not the sole application for petroleum. By 1900 some two hundred by-products accounted for at least half of the industry's sales, and numbered among them were the lubricating oils essential to the development of industrialization. Moreover, this expansion of output was being achieved while prices to consumers were being reduced. The wholesale price of kerosene, for example, declined from 45¢ a gallon in 1863 to about 6¢ by 1895, a decline faster than any other drop in the general wholesale price level of commodities.[39]

Petroleum men had every right to feel proud of themselves; theirs was a truly impressive material accomplishment. Yet, they found the public reaction to their record contained as much wrath as it did admiration. Many Americans argued strongly that the social cost of economic progress had been too great; that this progress had required the rise of big business as embodied in the giant corporation, and that that instrumentality was destroying America's traditional role as a land of opportunity. Very often the persons who joined the fight against big business were those whose jobs or businesses had been directly and adversely affected by the economic transformation.

A small manufacturer such as George Rice, determined to maintain his independence in the face of a galloping combination movement, would speak out against the phenomenon in cataclysmic tones. Of Standard Oil he wrote: "History proves that there is no crime in the calendar—save possibly murder—of which it is not guilty or capable. It is the blue-ribbon enemy of everything moral and religious, although it includes within its corporation canting hypocrites who occupy front seats beneath the altar in churches that are desecrated by their presence." And harkening back to the example of the American colonists and their revolt against George III, he warned: "The last resort is for the people to retake into their own hands the power that has been delegated and abused. Vigilance Committees have more than once had a purifying influence. There may be conditions which will again render them a necessity. There is a limit to human forbearance. Has that limit yet been reached?"[40]

After 1880 more and more of the attention of concerned Americans focused upon the industrial corporations, especially those that had by the process of combination come to dominate a key industry. In March 1881 a young Chicago journalist, Henry Demarest Lloyd, fired what might be regarded as the starting gun in the race by the public and its representatives to check the accelerating power of industrial enterprise. In that month Lloyd published in the *Atlantic Monthly* an article titled, "The Story of a Great Monopoly," dealing with the success of the

Standard Oil Company. The article, so popular that the issue had to be reprinted six times, brought to the attention of most Americans for the first time the fact that the petroleum industry had come to be dominated by a single organization. From that point on, the glare of the spotlight was never shifted from the oil giant and its officials. Pamphlets, speeches, articles, books, state and federal investigations remained dramatically focused upon the operations of Standard Oil. It came for most Americans to particularly typify their new and uncertain industrialized society, and when in 1890 in response to a tidal wave of public pressure, Congress placed upon the statute books the Sherman Antitrust Act, it could be said with only slight exaggeration that the law had been passed with Standard Oil primarily in mind.

But enacting an antitrust law, it soon became clear, was not the same as solving the problem of monopoly power in the United States. During the decade of the 1890s, a combination of lukewarm presidential interest in antitrust prosecutions, inadequate financing by the Congress of a miniscule Justice Department, and unfavorable judicial interpretations of key sections of the act resulted in little progress in the campaign against the trusts. The Standard Oil Company had itself apparently made government action against it more uncertain by abandoning the old trust framework and adopting instead, in the late 1890s, a holding company structure.

The Standard Oil Company (New Jersey) now became the parent corporation for the family of firms that formerly operated within the trust umbrella. Thus despite the passage of the Sherman Act specifically outlawing the trust device as a means of controlling an industry, the oil trust continued in existence under the guise of a new legal form. No wonder that George Rice could write his friend, Henry Demarest Lloyd, in 1897 that "surely the devil is at the helm to guide the Standard Oil Trust in all its devilish work, and there seems to be no overruling providence to demur or stop them, and laws are of no account, and our national emblem becomes a fraud and a farce."[41]

The 1890s had been busy years for Rice. He continually besieged the Justice Department with requests for antitrust action against Standard Oil. The Department did not respond favorably to his call, however, and during the McKinley years it even informed Rice that the "alleged combination against which you complained" was "not of an interstate character."[42]

More sympathetic to Rice's aims was Frank Monnett, an ambitious and energetic Ohio Attorney-General. Acting upon evidence and even funds supplied by Rice, Monnett instituted a suit against the Standard Oil Company of Ohio in 1898 seeking a forfeiture of its corporate

charter. Despite a considerable body of sensational testimony and even the face-to-face New Amsterdam Hotel confrontation between Rice and Rockefeller described earlier, the Supreme Court of Ohio dismissed the suit in December, 1900. For Frank Monnett the decision had become academic as his Republican party had denied him renomination as Attorney-General in 1899 in punishment for his aggressive activities in the antitrust field. Rice thus lost an influential ally.[43]

Three years later, in 1902, Rice was supplying a fresh ally, Ida Tarbell, with the facts of his oil industry experiences, details which would shortly appear in her *History of the Standard Oil Company* series for *McClure's Magazine*. Rice was portrayed in that work as a dogged and embattled defender of American free enterprise against the onslaughts of concentrated economic power.[44]

At the same time, not entirely through with the judicial process, Rice had returned to the courts. In between testifying in antitrust actions in states ranging from Nebraska to Texas, he also filed suit in the United States Court of Appeals in Trenton, New Jersey, charging the Standard Oil combination with violation of the Sherman Act and asking for triple damages totalling three million dollars. It was his contention that Standard Oil had destroyed his Marietta business. The suit was still pending at the time of his death on February 28, 1905, and was later dismissed by the Court on technical grounds.[45]

In his obituary, the *New York Times* stated that Rice's life "had been spent in his fight for what he considered the right, and he often declared that he would rather be right than rich." *The Petroleum Gazette* added: "It is within the facts to say that no other single individual has been so instrumental as Mr. Rice was in forcing revelations of the inner workings of the Standard Oil Company."[46] The comments of other reform journals echoed a similar tone.

Rice was to receive a posthumous vindication of sorts as Standard Oil soon faced what appeared to be a final collision with the federal government. A 1905 Congressional resolution mandated an investigation of the petroleum situation by the recently established Bureau of Corporations. Unfortunately for Standard Oil, the commissioner of the Bureau, James R. Garfield, had lately been taken to task by the press for a report on the meat industry that the public regarded as insufficiently critical, given the current popularity of Upton Sinclair's graphic novel, *The Jungle*. Garfield, therefore, apparently resolved that the Bureau's oil report would not suffer the same fate. Its release in May 1906 was a body blow to the officials of Standard Oil, who had cooperated fully with the investigating agency.

Garfield supported many of the allegations leveled at Rockefeller's

organization over the years and thereby set in motion further actions by Washington. On November 15 of the same year, the Justice Department, with the encouragement of an increasingly progressive Theodore Roosevelt, filed suit in the U.S. Circuit Court for the Eastern District of Missouri against the Standard Oil Company (New Jersey) and the other corporations of the combination. It was the government's contention that Standard Oil, by its past conduct and present stance in the petroleum industry, stood in violation of the Sherman Antitrust Act. Hearings on the suit began in the fall of 1907 and continued for fifteen months.

Despite a vigorous defense, a four-judge circuit court rendered a unanimous decision unfavorable to the Standard Companies. On November 20, 1909, that court found Jersey Standard and most of its subsidiary corporations to be in violation of the Sherman Act as an illegal monopoly. Not surprisingly, the ruling was quickly appealed to the U.S. Supreme Court. There arguments and briefs were again presented by both sides with a final decision not rendered until May 15, 1911.

When it was announced, it merited banner headlines in every newspaper in the land. The Supreme Court, upholding the verdict of the lower circuit court, ordered the oil giant dismembered. Thirty-three companies were to be severed from the parentage of Jersey Standard, including 16 of its 20 largest affiliates.[47]

Ironically, the Court's holding that Standard Oil did constitute a monopoly was reached at the very moment that the organization was losing rather than retaining control over its industry. With Rockefeller himself in retirement from the active management for over ten years, Standard's share of the market in 1911 was the smallest it had been for decades. The opening of new crude fields even faster than it could expand operations to keep pace; the rise of aggressive, integrated competitors such as Pure Oil, Gulf, and Texaco; a reduced demand for kerosene, Standard's staple, and a new demand for fuel oil, gasoline, and other products; and a top management in the Jersey structure marked by increasing age and conservatism, all contributed to reducing its share of the nation's refining capacity to just over 60 percent by 1911.[48]

But it would not have been to George Rice's pleasure to have known that the Standard organization, or at least the stockholders of its various companies, seemed to have actually benefited from the Court-ordered separation. All Jersey Standard shareholders received their ratable proportion of stock in the subsidiaries of which the holding company was forced to divest itself. They found themselves in many instances sharing, figuratively, in multiple gold mines rather than a single lode. Dividends of the individual companies generally increased in the following year,

and stock prices in a number of instances more than doubled after the dissolution. The investing public, through the information disseminated during the lengthy legal struggle, gauged for the first time the enormous real worth of the various Standard entities and began to bid for the stock accordingly. The principals holding the greatest interests in those companies, and most notably John Rockefeller, found that the Supreme Court of the United States had made them even wealthier than they had been before![49]

Naturally, the concern for the maintenance of economic opportunity did not melt away with the pronouncement of the Supreme Court's Standard Oil decision. The trust issue remained a live question, particularly in American political debates after 1911. In the very next year it proved to be the single most discussed subject in the tri-cornered campaign of Woodrow Wilson, Theodore Roosevelt, and William Howard Taft for the Presidency, though in the decades following its importance diminished.

Attitudes Toward "Competition" and "Monopoly" in Recent Times

Richard Hofstadter once characterized the years prior to 1914 as the era of the Founding Fathers of antitrust, while the quarter of a century following 1914 he termed "the era of neglect." Statistics would seem to bear out his conclusion regarding the latter period. Prosecutions instituted by the Justice Department fluctuated between a low of only three in some years to a high of just 22, considerably short of the 29 begun in 1912 when antitrust was the major issue and not even remotely close to the 85 instituted in 1940.[50]

The intrusion of World War I and the necessity for the Wilson administration to have the support of the business community in the effort to secure a victory in an international conflict; the return to power in 1921 of business-oriented Republican administrations; the better public image of capitalists fostered by the substantial philanthropic efforts of Rockefeller, Carnegie, and others; and a conscious effort on the part of Franklin Roosevelt during the early New Deal years to achieve the industrial rehabilitation of the depressed nation through a partnership of all elements in the economy, all contributed to the relatively low silhouette of the antitrust movement. This era of good feeling toward big business terminated with Roosevelt's appointment in 1938 of Thurman Arnold, an articulate and energetic Yale Law School professor, to head the Antitrust Division of the Justice Department. Within a year

Arnold had doubled the size of the Division and recruited young and able legal talent to carry on the fight.

Taking on whole industries at a time, Arnold focused primarily on protecting consumers and increasing their purchasing power. By 1943, when he resigned to assume a seat on the Circuit Court of Appeals, Arnold could point to the astounding record of having filed more than half the suits instituted by the federal government during the entire history of the Sherman Act to that time.[51]

American industry wrought miracles of production in the war years between Pearl Harbor and 1945. In the peak year of that production, 1944, the flood of munitions reached a level 50 percent above that of the enemy. The overwhelming bulk of this output was the work of the nation's largest business enterprises. Indeed the Roosevelt administration had consciously presumed that only big business had the necessary expertise, resources, and proven record of performance to win the production war. Some refurbishing of the image of business and businessmen was the result. While not quite regaining the pre-eminently favorable public opinion it had enjoyed in the 1920s, the business community nevertheless found itself viewed with renewed respect. And as economic prosperity marked the years after 1945, that trend continued. Further, while antitrust prosecutions never halted entirely in the war and postwar years, antitrust as a movement and as a major issue in American politics all but ceased to exist.

But there has been a rhythm to the American acceptance of the corporation, and beginning in the 1960s and continuing until today, a growing adverse tide of public opinion has become apparent. One scholar has explained it thus: "A more affluent, better-educated, more critical public began to question the value of ever-increasing production, the resulting pollution and environmental decay, and the defective products and services being produced; and they began to protest the public's seeming inability to influence the behavior of the business system." The frustrations of the war in Vietnam, the suspicions of the energy crisis, and the realities of business participation in the political corruption of the Nixon era all likewise contributed to the widespread criticism.[52]

How stands the American corporation today? Is its role in the nation's life expanding or contracting? By what standards do we judge its worth? These are crucial questions for Americans trying thoughtfully to balance economic achievement against the traditional values of the society.

Some contemporary data may serve as a starting point for their analysis. By the end of the decade of the 1960s, the United States numbered some 1.6 million active corporations on its various legal rolls, or approximately one corporation for every 126 persons in the country.

Over the past half century the corporate population has grown at a faster rate than our human population; in 1910 there were 342 people for each corporation. Corporations also formed an increasingly important segment of all business structures as chartered enterprises rose from 14 percent of all American businesses to one-third by 1970.

It is even more important to note, however, that the corporate world includes organizations of all sizes. While the small far outnumber the large, it is the latter which dominate the scene. Of the nearly one and one-half million corporations in 1965, some 94 percent had assets under $1 million. But conversely, only 1,900 companies, just 0.13 percent of the aggregate, each had assets of $100 million or more.[53]

The widely read economist John Kenneth Galbraith, seeing this disparity, has conceived of American business as operating in two distinct spheres or "systems." For him the prevailing sphere is the "planning system" where dwell the "one thousand manufacturing, merchandising, transportation, power, and financial corporations producing approximately half of all the goods and services not provided by the state." At the other pole, according to Galbraith, "making up the remainder of the economy are around twelve million smaller firms, including about three million farmers whose total sales are less than those of the four largest industrial corporations." This world he terms "the market system" since it alone operates in accord with neoclassical economic principles.[54] Galbraith, reflecting the views of many observers today, accepts the existence of the planning system, but asks that its potential be employed for the general good and that to insure that proper direction, a public planning authority be created.

Less willing to accept the inevitability of bigness and for that reason more reflective of traditional views which still may be in the majority, a Ralph Nader Study Group Report on Antitrust Enforcement recently labeled the antitrust issue "radically modern." According to the Nader Group: "The charge of 'bad economics' and 'irrational populism' is misplaced . . . when the point made is not that there should be more small, inefficient units, but that General Motors, with $24 billion in sales in 1969, could profitably be split into three to nine companies, or that LTV, with 87 subsidiaries, is neither efficient nor interested in the communities in which it invests."[55]

Before any position is assumed on the question, however, the advice of U.C.L.A. management professor Neil H. Jacoby could well be heeded: "Today, it is not enough to show that corporate enterprise has been the major generator of an unprecedented material welfare for Americans. It is also necessary to assess its effect upon equality of opportunity, racial and sexual discrimination, opportunities for self-

fulfillment, justice and equity, social mobility, the physical environment, and the individual's sense of community."[56]

The American corporation, never unreservedly regarded as a salutary addition to the national scene despite its two centuries and more of existence, would have under Jacoby's criteria even more tests to pass than in the age of Rockefeller and Rice. The odds are, however, that no matter what its score, it will fall short of that required for a final and permanent acceptance. In the United States, the fact that some men possess power over the activities and fortunes of others is sometimes recognized as inevitable but never accepted as satisfactory.

Persistent Questions Related to "The Pursuit of Happiness"

- Is concentrated economic power too potentially dangerous to trust to any corporation, no matter how well intentioned or public spirited it might claim to be?
- Is America a better nation socially and politically if its economy is characterized by many small business units rather than by a few large corporations?
- Has the affluence and prosperity achieved by the United States in the twentieth century been more the result of the actions of individuals or of organizations?
- Is there still room for "the little man" in the American economy today?

FOR FURTHER READING

On the Standard Oil Company in the Rockefeller Years:

Hidy, Ralph W. and Muriel E. *Pioneering in Big Business, 1882-1911: History of the Standard Oil Company (New Jersey).* New York: Harper & Brothers, 1955.

Nevins, Allan. *Study in Power: John D. Rockefeller, Industrialist and Philanthropist.* New York: Charles Scribner's Sons, 1953.

Pusateri, C. Joseph. *Big Business in America: Attack and Defense.* Itasca, Ill.: F. E. Peacock Inc., 1975.

Rockefeller, John D. *Random Reminiscences of Men and Events.* New York: Doubleday, Page & Company, 1909.

Williamson, Harold F. and Daum, Arnold R. *The American Petroleum Industry: The Age of Illumination, 1859-1899.* Evanston, Ill.: Northwestern University Press, 1959.

On the Problem of Economic and Individual Freedom and Power:

Cochran, Thomas C. *Business in American Life: A History.* New York: McGraw-Hill Book Company, 1972.

Friedman, Milton. *Capitalism and Freedom.* Chicago: University of Chicago Press, 1962.

Galbraith, John Kenneth. *Economics and the Public Purpose.* Boston: Houghton Mifflin Company, 1973.

Heilbroner, Robert L. *The Limits of American Capitalism.* New York: Harper & Row, 1966.

Letwin, William. *Law and Economic Policy in America.* New York: Random House, Inc., 1965.

Wyllie, Irvin G. *The Self-Made Man in America.* New York: The Free Press, 1966.

FOOTNOTES

[1] John H. Bunzel, *The American Small Businessman* (New York: Alfred A. Knopf, 1962), p. 114.

[2] Carter Goodrich, ed., *The Government and the Economy: 1783-1861* (Indianapolis: The Bobbs-Merrill Company, Inc., 1967), pp. 183-184.

[3] *Ibid.*, pp. 184-186.

[4] E.A.J. Johnson, *The Foundations of American Economic Freedom: Government and Enterprise in the Age of Washington* (Minneapolis: University of Minnesota Press, 1973), p. 88.

[5] *Ibid.*, pp. 89-90.

[6] Joseph Dorfman, *The Economic Mind in American Civilization* (New York: The Viking Press, 1946), p. 417.

[7] Peter Asch, *Economic Theory and the Antitrust Dilemma* (New York: John Wiley & Sons, Inc., 1970), p. 14.

[8] *Ibid.*, p. 2.

[9] William Letwin, *Law and Economic Policy in America* (New York: Random House, Inc., 1965), pp. 22-26.

[10] Hans B. Thorelli, *The Federal Antitrust Policy: Origination of an American Tradition* (Baltimore: The Johns Hopkins Press, 1955), p. 26.

[11] Sidney Fine, *Laissez Faire and the General Welfare State* (Ann Arbor: The University of Michigan Press, 1956), p. 5.

[12] John William Ward, "The Ideal of Individualism and the Reality of Organization," in *The Business Establishment*, ed., Earl F. Cheit (New York: John Wiley & Sons, Inc., 1964), pp. 42-45.

[13] John Tipple, "Big Businessmen and a New Economy," in *The Gilded Age*, ed., H. Wayne Morgan (Syracuse, N.Y.: Syracuse University Press, 1970), p. 19.

[14] John D. Rockefeller, *Random Reminiscences of Men and Events* (New York: Doubleday, Page & Company, 1909), p. 65.

[15] Letwin, *Law and Economic Policy*, p. 59; Bernard Bailyn, *The New England Merchants in the Seventeenth Century* (Cambridge, Mass: Harvard University Press, 1955), pp. 41-42.

[16] Arthur M. Schlesinger, Jr., *The Age of Jackson* (Boston: Little, Brown and Company, 1945), p. 90.

[17] Maurice G. Baxter, *The Steamboat Monopoly: Gibbons v. Ogden, 1824* (New York: Alfred A. Knopf, 1972), p. 70.

[18] Oscar Handlin and Mary F. Handlin, "Origins of the American Business Corporation," *The Journal of Economic History*, V (May, 1945), 4.

[19] Thomas C. Cochran, *Business in American Life: A History* (New York: McGraw-Hill Book Company, 1972), p. 77.

[20] Letwin, *Law and Economic Policy*, p. 65.

[21] Goodrich, *The Government and the Economy*, pp. 392-393.

[22] Cochran, *Business in American Life*, p. 78; Letwin, *Law and Economic Policy*, p. 66.

[23] Tipple, "Big Businessmen and a New Economy," pp. 17-18.

[24] *The New York World*, October 16, 1898.

[25] Johnson, *The Foundations of American Economic Freedom*, p. vii.

[26] Irvin G. Wyllie, *The Self-Made Man in America* (New York: The Free Press, 1966), p. 6.

[27] Testimony of George Rice, U.S. Industrial Commission, *Preliminary Report on Trusts and Industrial Combinations*, U.S. Congress, 1st Sess., 1900, I, 704.

[28] Gordon S. Wood, *The Creation of the American Republic, 1776-1787* (Chapel Hill: The University of North Carolina Press, 1969), p. 73; Johnson, *The Foundations of American Economic Freedom*, p. 185.

[29] Wood, *The Creation of the American Republic*, p. 72.

[30] Letwin, *Law and Economic Policy*, p. 10.

[31] Rockefeller, *Random Reminiscences*, p. 155.

[32] Allan Nevins, *Study in Power: John D. Rockefeller, Industrialist and Philanthropist* (New York: Charles Scribner's Sons, 1953), I, 7.

[33] *Ibid.*, I, p. 11.

[34] Ralph W. Hidy and Muriel E. Hidy, *Pioneering in Big Business, 1882-1911: History of the Standard Oil Company (New Jersey)* (New York: Harper & Brothers, 1955), p. 9.

[35] George Rice, *My Experience* (Washington: by the author, 1888), p. 1; William Z. Ripley, *Railway Problems* (Boston: Ginn and Company, 1913), p. xi.

[36] Rockefeller, *Random Reminiscences*, p. 112.
[37] Hidy and Hidy, *Pioneering in Big Business*, p. 35.
[38] Glenn Porter, *The Rise of Big Business, 1860-1910* (New York: Thomas Y. Crowell Company, 1973), p. 66.
[39] Harold F. Williamson and Arnold R. Daum, *The American Petroleum Industry: The Age of Illumination, 1859-1899* (Evanston, Ill.: Northwestern University Press, 1959), pp. 725-728.
[40] *Oil, Paint and Drug Reporter*, January 25, 1882; George Rice, *Standard Oil Company* (Marietta, Ohio: by the author, 1892), p. 230.
[41] Letter of George Rice to Henry Demarest Lloyd, December 8, 1897, Henry Demarest Lloyd Papers, State Historical Society of Wisconsin, Madison, Wisconsin.
[42] Thorelli, *The Federal Antitrust Policy*, pp. 408-409.
[43] *New York Times*, December 12, 1900; Hoyt L. Warner, *Progressivism in Ohio, 1897-1917* (Columbus: Ohio State University Press, 1964), p. 7.
[44] Letter, Rice to Lloyd, January 26, 1902, Lloyd Papers; Ida M. Tarbell, *The History of the Standard Oil Company* (New York: Macmillan Company, 1904), II, 46 ff.
[45] *New York Times*, August 20, 1904; Thorelli, *The Federal Antitrust Policy*, p. 409.
[46] *New York Times*, March 1, 1905; *The Petroleum Gazette*, March, 1905.
[47] Hidy and Hidy, *Pioneering in Big Business*, pp. 676-709.
[48] Harold F. Williamson, et al., *The American Petroleum Industry: The Age of Energy, 1899-1959* (Evanston, Ill.: Northwestern University Press, 1963), pp. 5-7.
[49] Allan Nevins, *John D. Rockefeller: The Heroic Age of American Enterprise* (New York: Charles Scribner's Sons, 1940), II, 607-608.
[50] Richard Hofstadter, "What Happened to the Antitrust Movement?" in *The Business Establishment*, p. 115; Walton Hamilton and Irene Till, *Antitrust in Action*, Monograph 16, Temporary National Economic Committee (Washington: U.S. Government Printing Office, 1940), pp. 135-143.
[51] Ellis W. Hawley, *The New Deal and the Problem of Monopoly* (Princeton: Princeton University Press, 1966), pp. 440-441.
[52] Neil H. Jacoby, *Corporate Power and Social Responsibility* (New York: Macmillan Publishing Co., 1973), p. 6.
[53] *Ibid.*, pp. 21-28.
[54] John Kenneth Galbraith, *Economics and the Public Purpose* (Boston: Houghton Mifflin Company, 1973), pp. 42-44.
[55] Mark J. Green, et al., *The Closed Enterprise System: Ralph Nader's Study Group Report on Antitrust Enforcement* (New York: Bantam Books, 1972), pp. 5, 21.
[56] Jacoby, *Corporate Power and Social Responsibility*, p. 16.

PART TWO

Teaching About Values

We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness—That to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed. . . .

Introduction

These are difficult and dangerous times. As the authors of the essays in Part I point out, the "self-evident" and "inalienable" rights of "life, liberty, and the pursuit of happiness" are becoming more and more endangered. Much of what we find in the world is not very pleasant to behold. The apathy and lack of concern of large numbers of people for other human beings of a different color, origin, area, or social class continue to be widely documented in the daily press, in popular magazines, and on radio and television. In some parts of the world, household pets eat better than do large numbers of children and adults in other areas. The air in some cities is so bad that physical exertion is impossible during daylight hours. Lung cancer, once a rarity, now kills more persons per year than all other types of cancer combined. Crime and violence steadily increase. Inflation and unemployment persist. At the present two percent per year growth in world population, the earth will be inhabited in the year 2010 by twice as many people as it is today.

Given this state of affairs, it is small wonder that many people are worried and afraid, confused and uncertain. The quality of all our lives is reduced by unsafe cities, bad air, poisoned water, ugly buildings, corrupt officials, loved ones wounded or dead. Nevertheless, our present state of affairs did not just happen. The problems we now face and the kind of world in which we now live have developed over the years as a result of policies put (or *not* put) into effect in the past by men and women just like ourselves. At one time or another, decisions were made (or *not* made) by individuals in positions of authority and responsibility that have helped to shape the world we presently know. Consider just these items:

- *Item:* World-wide public expenditures for military research and development in 1972 totaled some $25 billion; for all medical research $4 billion.
- *Item:* In 1973, in a period relatively free of major wars, the nations of the world were spending in total more than $240 billion a year on "defense" against (presumably) military attack by some

other member of the world community. An estimated $40-50 billion of this annual outlay was for nuclear weaponry.

- *Item:* Out of an adult world population of two and one-half billion, more than 700 million people are unable to read or write.
- *Item:* World food scarcity, with the threat of growing starvation, became an increasingly grave issue in 1974. Acute food shortages were reportedly more widespread than at any other time in history. In the developing world, an estimated 460 million people were suffering from severe malnutrition; up to half of the deaths of children under 5 years old were attributed to food deficiencies.*
- *Item:* Some 1.5 million persons are estimated to have died in Indochina in the last ten years of war, of which the great majority were civilians.
- *Item:* It is estimated that the burning of fossil fuels such as coal, oil, and natural gas places as much as fifteen billion tons of carbon dioxide (CO_2), a major pollutant, into the atmosphere annually. Pollutants like CO_2 have the capacity to increase the temperature of the earth's surface, thereby causing a rise of ocean level by as much as 300 feet every 100 years. Present predictions suggest that by the year 2000 enough CO_2 will have been released to raise the earth's temperature by two degrees.**

Wars, pollution, and poverty, however, do not "just happen." They exist because we allow them to exist; because our leaders chose to enact policies that encouraged their development and brought them into being. How problems like these are thought about and dealt with in the future, by us and our leaders, will determine not only the kind of world we shall live in in the years to come, but also even if we shall have a world to live in.

One thing is clear. If we and our students do not think about these problems and their consequences for all of humankind, we cannot take steps to deal with them humanely and intelligently in order to try and shape the kind of world that we want to have. We cannot plan for a future world if we do not have some conception

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* The information in this and the previous three items was obtained from Ruth Leger Sivard, *World Military and Social Expenditures, 1974* (New York: Institute For World Order, Inc., 1974), p. 3. (c) Ruth Leger Sivard.

** This information was obtained from *World Military Expenditures, 1970.* U.S. Arms Control and Disarmament Agency, U.S. Government Printing Office, Washington, D.C. 20402. Cited in William A. Nesbitt, ed., *Data on the Human Crisis: A Handbook for Inquiry* (New York: University of the State of New York, Center for International Programs and Comparative Studies, State Education Department, Albany, New York, 1972), p. 18.

as to what kind of place that world is to be. And any conception of what we want the world to be like is rooted in our values. It seems to me that, as educators, we really have only two choices. We can accept the present state of affairs as reflecting a set of trends that will continue into the future and which we and our descendants can do little, if anything, to change (and by default we can imbue our students with that attitude), or we can do our best to help students acquire the kinds of information and skills that they will need to be able to think seriously about these problems and their consequences and to act when and as action is appropriate and needed.

We shall need more than the so-called "new" social studies of the 1960s with its emphasis on "inquiry" and the "structure" of the social science disciplines, however, to bring this about. So, too, shall we need more in the elementary schools than only a renewed emphasis on the basics of reading, writing, and arithmetic if we are to help students locate, propose, analyze, and evaluate possible solutions to these problems. We shall need nothing less than serious and sustained attention to values and value issues at every grade level. The identification, comparison, and analysis of values and value positions, along with a systematic exploration of value issues and conflicts, need to be a continuous and planned part of classroom activity throughout the grades. A major purpose of Part II of this Yearbook, therefore, is to suggest some ways to bring this about.

Before we begin, however, it is appropriate to indicate, as was done in the introduction to Part I, what this part of the Yearbook *is not*. Part II is not an attempt to describe all of the approaches to values education that currently exist. Nor is it an attempt to illustrate how to teach about the values of life, liberty, and the pursuit of happiness in social studies classrooms, though some reference will be made to teaching about these values. Rather, it is an attempt to suggest some generically applicable ideas and strategies that teachers can use to help students:

- formulate some idea of what a value is;
- know the difference between a factual-type question, an inferential-type question, and a question of value;
- know what a value-indicator is;
- make reasonable inferences about a person's values;
- compare and contrast values;
- participate in value discussions;
- evaluate value-claims;

- evaluate evidence offered to support an argument;
- increase their understanding of why different people value different things;
- realize that values conflict;
- explore and evaluate alternatives and consequences in value conflict situations.

This is a pretty tall order, and hence no claim is made that what will be presented here is in any way a comprehensive treatment, or the only way to bring about the objectives listed above. Many other approaches, both similar and different, have been proposed.* All need to be studied, tried out, and carefully evaluated according to criteria agreed on by the social studies profession. Indeed, a carefully controlled study of alternative approaches to values education is long overdue. What is claimed here is that the strategies and ideas presented are viable tools that any teacher can use to get students thinking and talking about values and value issues in the classroom.

A word about the essays presented in Part I: I deliberately decided not to restrict my examples to selections taken from these four essays. I have included a fair number of examples taken from Part I, of course, since the issues presented there (especially the case studies) do offer a number of excellent points of departure for engaging students in value discussions. But I also have included many other examples, taken from a variety of sources and dealing with a variety of topics, to illustrate the generic applicability of the ideas and strategies which I propose.

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* See, for example, Donald W. Oliver and James P. Shaver, *Teaching Public Issues in the High School* (Boston: Houghton Mifflin, 1966); Louis E. Raths, Merrill Harmin and Sidney B. Simon, *Values and Teaching* (Columbus, Ohio: Charles Merrill, 1966); Michael Scriven, *Student Values as Educational Objectives* (Boulder, Colorado: Social Science Education Consortium, 1966); Maurice P. Hunt and Lawrence E. Metcalf, *Teaching High School Social Studies* (New York: Harper and Row, 1968); Lawrence E. Metcalf, ed., *Values Education: Rationale, Strategies, and Procedures*, 41st Yearbook, National Council for the Social Studies (Washington, D.C.: NCSS, 1971); Lawrence Kohlberg, "The Cognitive-Developmental Approach to Moral Education," *Phi Delta Kappan*, June, 1975, pp. 670-677; and James P. Shaver and William Strong. *Facing Value Decisions: Rationale Building for Teachers* (Belmont, California: Wadsworth Publishing Co., 1976).

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The Nature of Values

Each of the four case studies discussed in Part I of this Yearbook suggests a basic truth about history: it is loaded with values. A *value* is an idea—a concept—about what someone thinks is important in life. When a person values something (an object, another person, an idea, a way of behaving), he* deems it worthwhile—worth having, worth doing, or worth trying to attain. All of the episodes in Part I make this clear: American reactions to the practice of impressing American seamen by Great Britain and other nations during the early 1800s; the persistent efforts of feminists throughout the nineteenth and early twentieth centuries to obtain the right to vote for women; the perseverance of the Mormons as they struggled against persecution and government control; and the activities of John D. Rockefeller in building Standard Oil are striking examples of how the values of people affect not only their own behavior, but also the behavior of others.

Like all ideas, values do not exist in the world of experience, but in people's minds. They are *standards* of conduct, beauty, efficiency, or worth that people endorse and that they try to live up to or maintain. All people have values, although they may not always be consciously aware of what their values are. As standards, values help us to determine, in the simplest sense, if we like something or not, and in a more complex way, to evaluate whether a particular thing (object, person, idea, event, action) or class of things is good or bad, desirable or undesirable, beautiful or ugly, worthwhile or not, etc., or somewhere in between.

The most important standards that we have are the ones by which we judge conduct—by which we determine what kinds of actions are proper and worthwhile and what kinds are not. These standards are our *moral values*. Moral values represent guides to what is right and just. Thus a person may argue that it is not right to kill another person because human life is sacred. Since he values human life, he views the taking of a life as wrong.

Different people, of course, value different things. Most men and women did not support feminist efforts to obtain the vote during the 1800s. The "value" of Mormonism was certainly not something shared by the majority of Americans in the late nineteenth century, nor is it today. And even Jefferson's assertion of the value of "life" as an inalien-

* In order to make the flow of my writing as smooth as possible, I shall use the pronoun "he" when referring to teachers and other adults, and the pronoun "she" when referring to students.

able right has continually been challenged by many individuals and governments since he first put the words to paper.

People not only value different things, but they also may value the same thing for different reasons. The reasons that people give for valuing something can tell us quite a bit about them. Some value certain things because they have been told that these things are "important" or "valuable" or "worth valuing." Others value certain kinds of things (music or automobiles or colors) because these things appeal to their tastes—they like them. These are things that they enjoy and prefer to have or be around. They feel good when they hear or see these things, and will often go to a fair amount of time and trouble to be where these things are. Taste, however, depends on experience. One's taste (the kinds of things one likes and enjoys) is likely to be rather narrow until one has had the opportunity to experience many different things and become aware of different alternatives—aware that there are many different types of things to have and do that *can* be enjoyed and valued. It is for this reason that teachers should do their best to engage students in as many different kinds of learning experiences as they can.

Some things may be valued because they are worth a large amount of money in the marketplace—that is, many people are willing to pay a certain number of dollars to obtain such things as a house, a new jacket, an afternoon's labor, or a reciprocal trade agreement with another nation. It is in this sense that some things may be considered *in*valuable —the person who owns them cannot conceive of any amount of money for which he or she would part with the item. Also, some people may value something because they believe it will allow them to live as they could not otherwise. Thus many people value a stricter (or looser) interpretation of the Constitution by the courts, or the abolition (or preservation) of the death penalty, or less (or more) stringent laws relating to the use of marijuana, or greater (or lesser) involvement in world affairs because they believe that this will allow everyone to live more freely and safely.

Values also differ in terms of the amount of importance we attach to them. Some values, such as a liking for Ford automobiles, are essentially personal preferences. They represent and reflect a person's taste—what he likes and prefers over other things of a similar nature. We are not likely to argue that others must also value such things, though we usually find ourselves quite pleased if they do. Some values, however, are far more important in the world's affairs than personal preferences. In fact, they are of such importance that the holder of such values is frequently prepared to argue that other people also should hold them. Such values are viewed as basic to "the good life"—as essential to life

in general and to the quality of life in particular. "Respect for persons" is such a value for many people. Equal opportunity, antipathy toward war, and universal suffrage are other such values. Many other values, such as honesty, bravery, tact, cleanliness, appear to fall somewhere between these two extremes. They are more important to us than personal preferences, yet we do not consider them as essential to the survival of the species. And a value that is essentially a personal preference at one time may over time, or in certain contexts, take on the status of a more basic, fundamental value (the value now being placed on ecology—developing and maintaining a clean and healthy environment —is an example).

We also use our values in another way. We often set certain standards to help us achieve or acquire other values we consider important. These are frequently referred to as *instrumental values:* the American colonists revolted against Great Britain in order to govern themselves. The act of revolution was an instrumental value viewed as necessary to attain something else of greater importance—the establishment of a government that would derive its powers "from the Consent of the Governed . . . ."

Instrumental values are the *means* that people endorse as being important and necessary to attain other values, or *ends,* that are usually (but not necessarily) considered important in and of themselves. A continuing danger in this regard is that means may become ends without our being aware of it—the instrumental value may become valued not because it leads on to something else that is valued (and presumably justified), but as an end in itself. This may or may not be a good thing. For example, leaders (teachers?) who value laws as being necessary to the maintenance of a just and orderly society may come to value laws for the sake of laws alone, insisting after a while that any and all laws be obeyed automatically, no matter what the law requires.

The reverse is also true. For some individuals, certain ends become so important that they fail to consider means. They decide to use any and all means at their disposal, no matter what they involve, to attain those ends. To a considerable degree, this is descriptive of many of those, including President Nixon, who became caught up in the scandals of Watergate.

Idea and Feeling

As mentioned previously, values are *ideas* about what is important in life. They are concepts, abstractions. As such, they can be defined, compared, contrasted, analyzed, generalized about, and debated.

As standards, they can be used explicitly to judge the worth of things.

But values also have another dimension, an emotional one. For values are emotional commitments. One does not value something that he or she doesn't like very much. There is a considerable amount of feeling involved. People are concerned—they care—about the things that they value, and they care about them a good deal. Susan B. Anthony is a case in point. She not only believed that suffrage for women was important, but she cared enough to put her beliefs to the test of voting when it was against the law for her to do so, and to face the consequences of her act. It is this fact—that values are both idea and feeling, that they have both cognitive and affective components—that is so often overlooked by many who profess to be "value-educators" today.

Once we view values as both intellectual and emotional commitments, it follows logically that values-education-inclined educators must plan for both the emotional and intellectual growth and development of young people. We want people not only to have values, but also to be able to justify their values both logically and morally. If one accepts this premise, educators must think about ways by which they can not only help students to think about what people (including, of course, themselves) consider important and how they feel about things, but also *why* they consider these things important and *why* they feel the way they do. This means devising strategies and procedures by which teachers can engage students in processes that will develop and improve their intellectual abilities; i.e., their ability to think logically, to gather relevant data, to verify assertions, to offer reasoned explanations, and to draw warranted conclusions. It also means devising strategies and procedures by which teachers can help students increase their capacity to empathize with others from a wide variety of different cultures and backgrounds so they can begin to understand (though not necessarily accept or agree with) values different from their own, or those of their parents and friends. Any program or set of activities or procedures that is referred to as "values education" which does not take into account and plan for both the intellectual and emotional dimensions of human beings is incomplete at best.

Value-Indicators

Values cannot be directly observed. They must be inferred from value-indicators—what people say and do. Both the actions and statements of people offer clues about their values.

People's actions often give us ideas as to what they value. The activities in which people engage consistently and willingly, without being coaxed or threatened, often are quite revealing. Consider Susan B. Anthony's decision to register and vote in that election in 1872, or the tarring and feathering of Joseph Smith by Mormon dissenters in 1837. What do their actions suggest about their values?

Or, in a more immediate context, consider each of the following examples. What do they suggest about the values of the teachers involved?

- a fourth-grade teacher in Atlanta, Georgia requires that students raise their hands before they may speak out in class discussions;
- a tenth-grade teacher in St. Louis, Missouri requires that all written assignments be completed in ink, and penalizes students if words are misspelled;
- a twelfth-grade teacher in Detroit, Michigan refuses to give an opinion on the desirability of school busing when asked to by the class because the topic is too "controversial" in nature;
- an eighth-grade teacher in San Francisco, California requires students to memorize and recite aloud, with no mistakes, the Preamble to the Constitution of the United States;
- an eleventh-grade teacher in Miami, Florida has students compare and contrast descriptions of the American Revolution as presented in British and American textbooks;
- a seventh-grade teacher in Omaha, Nebraska exhorts her students to "think critically," yet spends most of the class' time lecturing about "the men and women who have made this country great";
- a first-grade teacher in Seattle, Washington holds weekly "classroom meetings" in which the class members vote on classroom rules and procedures;
- a ninth-grade teacher in New York City requires that students develop at least one "action project" during the semester, in which they commit themselves to something to improve "the quality of life in New York City";
- a sixth-grade teacher in Phoenix, Arizona has students analyze two television programs a week in terms of the amount and kinds of propaganda which they contain.

Actions, therefore, can provide one clue to values. But a person's *words,* as set down in speeches, letters, proclamations, editorials, articles,

or other forms of written or spoken communication, can also provide us with clues about what he or she values. Thomas Jefferson, for example, set forth some of the basic values of the American revolutionaries in the Declaration of Independence in 1776:

> We hold these truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed.

The Constitution of the United States, along with the Bill of Rights, was later adopted partly in order to guarantee the values identified in the Declaration of Independence.

Words, then, can also be value-indicators. Written or spoken statements like Jefferson's indicate that an individual views a particular thing or class of things as possessing a certain amount of quality or merit (though exactly *how much* is not always clear), and therefore is worth obtaining, doing, or (if a policy) following. Such statements are called *value-judgments*.

Another type of value-judgment is a statement indicating what an individual or group thinks should be done, whether it has been done in the past or not.* The past (not to mention the present) is full of examples of people telling other people what "should" or "should not" be done. "Impressment should be resisted by any means at our disposal." "Kings should be the servants, not the proprietors of the people." "Women should have equal political rights with men." "No person's life should be taken for granted." "No government should be deposed because of 'transient' factors." "The basic rights of all people should be guaranteed by law." Such statements suggest that the speaker considers the *value-object* referred to (impressment, kings, political rights, life, government, basic rights) as being important in some way—worth having or doing, or the reverse.

Both a person's words and actions, therefore, may constitute *evidence* of what he or she values. We cannot be absolutely certain, of course, since the person may be trying to deceive or confuse us. The more evidence we have (the more of a person's actions and sayings we have observed under a wide variety of conditions), therefore, the more accurate a picture we are likely to obtain of what is valued.

* When issued by politicians or government decision-makers, this type of value-judgment is usually called a policy statement.

Values, Teaching, and the Schools

During the late 1960s and the 1970s, interest in values education greatly increased among social studies educators. Many books, pamphlets, articles, and chapters in methods textbooks appeared which were devoted to the topic. The topic became a favorite one for professional meetings and keynote addresses at conferences and conventions of social studies teachers, and the subject of a veritable host of workshops held around the country. Many of the newer history and social studies curriculum materials and courses of study are now concerned with questions of value. Unfortunately, however, there is little evidence to show that value questions and issues are explicitly identified, discussed, and analyzed in a systematic way in most social studies classrooms.

The Lag Between Advocacy and Practice

Systematic and explicit exploration of value issues does not occur in most schools. The reasons for this lag between what is being advocated in texts and articles and presented at social studies conferences and workshops, and what is being taught in the schools are easy to understand. Most teachers, like most adults, grew up in a culture which traditionally viewed questions of value as essentially private matters which were not to be discussed in public. Often, parents and other groups oppose the discussion of controversy, which questions of value, by their very nature, involve. Furthermore, some teachers fear that any explicit attempt to develop values or to discuss value issues on their part boils down to indoctrinating students. Many, influenced during their undergraduate (and often graduate) training by historians and social scientists to concentrate on "getting the facts," state that they have more than enough to do trying to "get the subject matter" across without having to worry about values. Others believe that values education is more properly the domain of the family or the church. And a few confess that they are ignorant about how to proceed.

Though these objections and fears are understandable, they should not keep social studies educators from teaching about values in their classrooms. In the first place, many issues which once were viewed as private matters are now topics frequently discussed in newspapers and magazines. Secondly, it is clear that teachers can help students think about and discuss value-laden issues in their classrooms without insisting on the acceptance of any one point of view.

As far as subject matter goes, any subject is loaded with questions and issues about values, and to ignore this fact is to ignore much that is rich

and exciting about the subject. How can one teach about the decision of President Truman to drop the atomic bomb on Hiroshima and Nagasaki, the Supreme Court opinions of John Marshall, United States participation in Vietnam, what makes art "great" or music "exciting," or even classroom rules without referring to values? The case studies presented in Part I of this Yearbook are ample testimony to this fact. It would be impossible to teach about impressment, or woman suffrage, or the Mormon dream, or the activities of John D. Rockefeller without saying, at least implicitly, something about values.

The argument that values education more properly belongs in the home or church is a traditional one, but there is little evidence that any sort of *systematic and explicit* discussion of values and value issues occurs in these institutions. When one considers that the children of a majority of Americans do not attend church regularly, or that few parents are trained in discussion techniques or rational argumentation, and that there is no evidence to indicate that many are inclined to become trained, it seems unrealistic to assume that we should rely on the home and church rather than the school as a foundation for values education. It is not that other institutions in our society could not initiate and maintain some sort of ongoing, systematic discussion of values issues; it is that they have not done so, and there is no evidence to indicate that they intend to do so. If this is to be done, I think, the schools must do it.

Values Education Is Unavoidable

It should be realized that teachers already *do* teach values. Everything that a teacher does in the classroom—his actions, sayings, gestures—smacks of values. All of the activities in which teachers engage—the books they ask students to read, the seating arrangements they establish, the topics they choose to discuss, the films and filmstrips they select, the speakers they invite, the movies and plays they endorse, the assignments they give, and the examinations they prepare—all suggest to students that they view some ideas, events, individuals, policies, and behaviors as being more important than others for students to consider.

Nor is it just teaching alone that is value-impregnated. So too are the schools as a whole. As John Childs once remarked, the organization of a system of schools is in itself a moral enterprise, for it represents a deliberate attempt by a human society to control the pattern of its own evolution.[1] Charles Silberman illustrated clearly in *Crisis in the Classroom*[2] that values permeate not only the "formal" curriculum of the school—the deliberately planned-for experiences which are designed to

accomplish the intended, though not always explicitly stated, goals of the various areas of the curriculum—but also the "hidden" curriculum—the experiences which are not planned and which result in unintended and often undesired student learnings.

One of the clearest examples of the hidden curriculum can be found in the celebrated *Tinker* case which occurred in Des Moines, Iowa, in 1969. As a symbol of protest against the Vietnam war, several students wore black armbands to school for a day. When they were asked to remove the armbands, the students refused and they were suspended. This decision of the school administration was taken to court by the parents of the students in question. The resulting case, *Tinker* v. *Des Moines,* was eventually appealed to the Supreme Court. The High Court, in a 7-2 decision, ruled that students are "persons" under the Constitution, and that, under the First Amendment, various forms of peaceful protest (such as the wearing of armbands) qualify for protection as a form of free "speech."

What do incidents like this convey to students about the values of the schools they attend? What do they suggest about the kinds of things that the school expects the students themselves to value? Do the formal and hidden curriculums of the school conflict in any ways? And if so, how? The implications of what goes on, both formally and informally, cannot help but give students some ideas about what the school and the teachers and administrators within it consider important. Are those things which teachers and administrators do in schools the kinds of things they want their students to emulate? Are the policies which are stated or implied in school regulations what teachers and administrators want to stress? Is that which is taught what teachers and administrators believe should be taught? Are the values which teachers reflect in the materials and procedures that they use the values they want to reflect? The Bicentennial gives us a renewed opportunity to think about the values expressed in the Declaration of Independence and the Constitution. Do our classrooms and our schools maintain and enhance those values?

As we enter into our third century as a nation, it is important for all who teach the social studies to think about these questions, for what happens in our classrooms and in our schools says much about our values.

Questions That Get At Values

Let us now consider some procedures that teachers can use to help students think about values in social studies classrooms. In the pages

which follow, emphasis is placed on suggesting ways to make reasoned inferences about values, and to discuss value issues intelligently. Other worthwhile objectives, particularly those which focus on helping students to act on their values, are given lesser attention. This has been done for three reasons: space limitations; a belief that the development of strategies designed to help students think systematically about value issues has been under-emphasized; and, as regards social action in pursuit of values, a belief that *intelligent* action requires thinking beforehand.

The essence of any inquiry into values lies in the asking of appropriate questions by teachers and students. "Appropriate" questions are those which assist teachers and students to achieve a particular objective or set of objectives which they consider important. It follows, therefore, that there are many different types of questions which can be asked.

Determining what sort of question to ask students requires that teachers ask themselves some questions as well. "Where am I going?" "What do I want to accomplish?" "Why do I want to accomplish this?" "Will this particular question or set of questions help me accomplish what I want to accomplish?" Getting students to search for factual information requires one type of question; getting them to give examples or define what they mean by a particular word or phrase requires a different type; and getting them to make inferences about the reasons and values which underlie facts requires still another type. All questions, of course, require careful thinking if they are to be effective. The point being made here is that different purposes dictate different questions.

Let me suggest and give a few examples of three categories of questions that might be asked. These categories include:

- questions which ask for facts
- questions which ask for definitions
- questions which ask for inferences

These categories differ in terms of the purposes behind them, and the types of responses they are likely to bring forth.

Questions Which Ask for Facts

The chief purpose of factual-type questions is to determine if students have acquired or obtained a desired amount of factual data. Here are some examples:

- Who was the author of *A Tale of Two Cities?*
- What territory did the United States purchase from France in 1803?
- When was the Peace Corps established?
- Where is the country of Chad located?
- How did the Americans react to the issue of impressment in the 1800s?
- In what order did the states ratify the Bill of Rights?
- What was the name of the judge who presided over the trial of Susan B. Anthony in 1873?

Notice that factual-type questions ask students to make assertions (factual claims) about the observable world, and things, events, or individuals that exist or take place within it. These assertions are ultimately verifiable by recourse to *observation.*

Questions Which Ask for Definitions

The main purpose of definitional-type questions is to find out what a student means when she uses a given term or phrase. Here are some examples:

- What is the meaning of the term "vertical integration"?
- Can you give me an example?
- What characteristics must someone possess to qualify as a "great" President?

To answer this type of question, students must either give an example or describe essential characteristics. Note that there is no such thing as a "correct" answer to a definitional-type question, only more or less "agreed-on" answers. When students offer a definition, they are not describing a state of affairs, or the occurrence of an event or happening. They are not saying something about the nature of the real world, but instead something about the meaning of words. The acceptability of a student's response to a definitional-type question lies in the degree to which the definition being given agrees with an official or authoritative definition to be found in a recognized source (e.g., a dictionary). If the word being defined does not appear in a dictionary, the acceptability of the definition depends on the degree to which it is clear and promotes understanding by those with whom the term is being used.

Questions Which Ask for Inferences

Inferential-type questions ask students to "go beyond the data" previously acquired, to explain why they think something happened, draw a conclusion, suggest an attitude, feeling, or value, or a state of mind, or form a hypothesis about what might happen sometime in the future. Here are some examples:

- What caused the people to tar and feather Joseph Smith?
- How did George Rice feel about John D. Rockefeller?
- What else might Alice do?
- What conclusion can you draw from all this?
- What would you say Susan B. Anthony considered important?
- If she did that, what might happen?

Here many answers, all equally acceptable, are possible. There is no such thing as "the" or even "a" correct answer to inferential-type questions. Students are being asked to do such things as reflect on and analyze facts, to explain possible relationships which they think exist among facts, to identify feelings and values, or to "make a reasoned guess" as to how something will turn out. Notice that all questions which ask students to identify values are inferential-type questions (see Figure 1).

Figure 1
TYPES OF RESPONSES
WHICH DIFFERENT CATEGORIES OF QUESTIONS CALL FOR

Factual-type questions ask for:	*Definitional-type questions ask for:*	*Inferential-type questions ask for:*
names dates places events descriptions	characteristics examples meanings	conclusions alternatives generalizations values feelings hypotheses

Questioning Patterns

It is not only the questions that a teacher asks that are important in value discussions, but also the way in which he asks these questions. As mentioned earlier, it is most important to get a variety of responses

emitted and recorded in order to get as much factual data as possible charted so that students will have a substantial base of information available from which to make inferences. We also want to encourage students to offer as many inferences about reasons and values as they can in order to increase their understanding and expand their awareness of how other people think and value. Accordingly, two sorts of questioning patterns suggest themselves. The first, called *horizontal extending*, is used when a teacher desires to get more of the *same type of response* from students. For example, if a teacher wants more facts to come out, he continues to ask factual-type questions of several students *before* asking any other type of question. If more inferences as to why the facts occurred are desired, the teacher continues to ask questions which call for inferences about reasons. The same applies to any other type of question that might be asked. The *same type* of question is asked again and again before moving on to a different type. In the example below, the teacher is trying to elicit as many facts as he can from a class that has just read about the trial of Susan B. Anthony as presented in the case study in Part I. The teacher proceeds as follows:

T: All right, what can you tell me about what Susan Anthony did here? Remember, I'm interested in what she did or said, not what you think of her at this point (asking for facts).

Al: She tried to register to vote, but the registrar wouldn't allow her to.

Joe: Her sister went with her.

Al: Neither of them was allowed to register.

Joe: Right.

T: What else can you tell me about her?

Sue: There were other women who tried to register too, but they weren't allowed to either.

Bob: Well, not exactly.

T: What happened, Bob?

Bob: Susan Anthony *was* allowed to register. She was refused the first time she tried, but then she returned and the registrar allowed her and some other women to register this time.

Al: Oh, yeah, I remember, she promised to pay any legal costs which might arise—that is, which the registrars might have to pay—and they agreed then to let her and those other women register for the election.

Sue: She was cool! I really admire what she did.

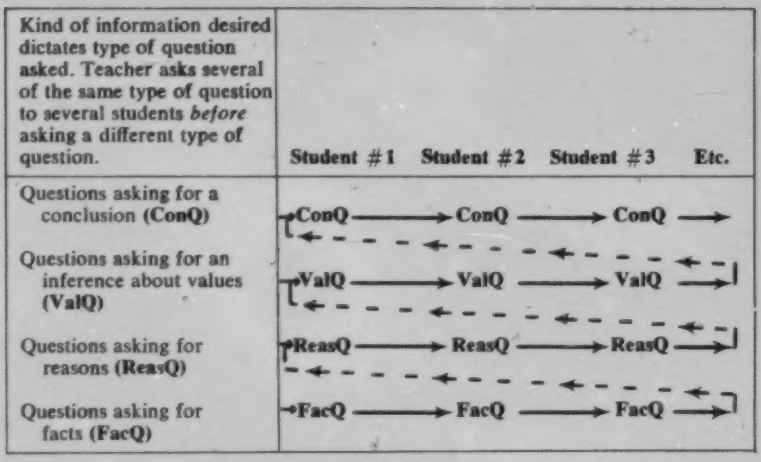
T: Is that something that we can observe about Susan Anthony, Sue, or your impression of her?

Sue: My impression.

T: Okay, but right now let's keep trying to zero in on what she said or did rather than tell how we feel about her. We'll have lots of time for that later. Now, what else happened in this situation?

The teacher in this instance is seeking to obtain from his class as many facts as he can regarding the people in the case study. Therefore, he repeatedly asks *only* questions which call for factual information. His purpose in doing so is to get as many of the facts of the situation identified and recorded as he can so that there will be a sizable base of information available from which students can make inferences. Once he has obtained as many facts as his judgment tells him he is likely to get in this situation, he can proceed to ask a series of questions which call for inferences about reasons; when he has acquired a fair number of such inferences, he can ask a series of questions which call for inferences about values, questions which call for students to suggest similarities and differences, to form conclusions, etc. Figure 2 illustrates this pattern of horizontal extending.

Figure 2
HORIZONTAL EXTENDING



A second type of pattern is that of *vertical extending*. This pattern is used when a teacher wishes to obtain a different kind of response after having obtained several responses that are of the same type. For example, when a teacher follows a factual-type question with one which asks for inferences about reasons and then follows this question with one which asks for inferences about values, he is engaging in vertical extension. This pattern is usually followed when one wishes to have a student or class make inferences and draw conclusions about a *particular* fact, rather than produce a large number of facts and inferences for charting. Here is an example:

T: Who can name an explorer who sailed from Europe during the fifteenth century? Doris? (asking for facts)
Doris: Columbus?
T: Okay. Why did Columbus sail at that time, Doris? (asking for inferences about reasons)
Doris: He was trying to find a new route to the East Indies.
T: What does that suggest about him? (asking for a conclusion)
Doris: I don't know. Maybe that he was curious?
T: All right. Who can name another explorer from that time? Al? (asking for facts)
Al: Ponce de Leon.
T: Why did he sail, do you think? (asking for inferences about reasons)
Al: He was looking for the fountain of youth, which a lot of people believed in then.
T: What does that suggest about him? (asking for a conclusion)
Al: He was a product of his time, I guess.

Notice that each of the questions that this teacher asks is a different type than the one that precedes it. Also notice that he asks one of each type of the same student before he goes on to another.* Figure 3 illustrates this pattern.

Figure 3
VERTICAL EXTENDING

Kind of information desired dictates type of question asked. Teacher asks several *different* types of questions to the same student before asking questions of a different student.	Student #1	Student #2	Student #3	Etc.
Questions asking for a conclusion (ConQ)	ConQ	ConQ	ConQ	ConQ
Questions asking for an inference about values (ValQ)	ValQ	ValQ	ValQ	ValQ
Questions asking for reasons (ReasQ)	ReasQ	ReasQ	ReasQ	ReasQ
Questions asking for facts (FacQ)	FacQ	FacQ	FacQ	FacQ

* Questions which ask for definitions are asked in both patterns whenever the meaning of a word is unclear, and the teacher (or a student) deems it necessary to have the word defined.

It has been my experience that horizontal extension is a more profitable pattern to pursue when it comes to initiating and maintaining classroom discussions about values, particularly if one wishes to construct a values chart which contains a sizable amount of information. Also, the discussions which ensue are more likely to have more students participating at the same level (i.e., more discussing reasons at the same time, etc.). On the other hand, if a teacher desires at times to zero in on a particular student and to help her extend her thinking in some depth, then vertical extension seems to work best.

Making Inferences About Values

With these different types of questions and patterns in mind, let us now consider how to use them to help students identify and compare values in the classroom. We start by presenting students with a *value-incident*—a situation, argument or illustration in which individuals or groups do something that is important to them. The case studies presented in Part I contain several examples of such incidents. Consider, for example:

- the sending of a press gang from the *Leopard* to take seamen from the *Chesapeake* in June of 1807;
- the continued advocacy for war with Great Britain by Hezekiah Niles in his editorials in *The Weekly Register* during the winter of 1811-1812;
- Brigham Young's declaration of martial law in Utah in 1857;
- Mormon circumvention of the federal Anti-Polygamy Act of 1862;
- the decision of Susan B. Anthony to register and vote in November of 1872;
- Judge Ward Hunt's instructions to the jury in the trial of Susan B. Anthony in June of 1873;
- the granting of reduced freight charges to the Standard Oil Company by the railroads in the late 1800s;
- the determination of George Rice to maintain the independence of his small manufacturing operation rather than combine with larger companies during the latter half of the nineteenth century.

Value-incidents can be found among a variety of different kinds of data, both past and present, including poems, cartoons, personal advice columns (such as any of the Ann Landers or Dear Abby syndicated columns), advertisements, magazine articles, editorials, "Letters to the Editor," sayings, slogans, popular songs (such as "She's Leaving Home" by the Beatles from the album *Sgt. Pepper's Lonely Hearts Club Band*),

newspaper stories (such as those written by sports writers about football or other sports figures), quotations, films, television programs, and even comic strips (*Doonesbury, Peanuts,* and *Dick Tracy* are good examples).

Here are three contemporary examples. Note the fact that they all recommend (or imply the recommendation of) a particular activity, behavior, object, or idea.

Example #1: A Newspaper Article[3]

He "Helped" Wife To Die

CLARKSTON, Michigan—Perhaps sometime next week Robert C. Waters will be charged for what he did.

Maybe by next Wednesday his office will reach a decision on the specific charge, Oakland County Prosecutor L. Brooks Patterson said Friday.

But for some people the law didn't quite have a charge to cover what Waters said he did Wednesday morning: he aided in his wife's suicide.

"It is a very complex legal case because of his role of assistance," Patterson said. "It was not a crime of hate; it was a crime of love. And that makes it more difficult to level criminal charges."

The general facts surrounding the death of Mrs. Kathleen Waters, 65, come from Waters' statement to investigators on Wednesday and Thursday.

His wife of 40 years was ill. She had previously suffered a stroke; she was arthritic. And she was suffering from emotional problems stemming from bad health.

After Mrs. Waters retired from the Clarkston State Bank in 1966, her will to live declined. She had talked of suicide since 1971. She had consulted several doctors about her emotional problems, Waters told investigators.

Waters, 65, a retiree from the GM Truck and Coach Division last year, tried to dissuade his wife from killing herself.

For a long time last Tuesday, Waters said, he and his wife talked of her suicide. Then on Wednesday morning she said she definitely wanted to die.

"The facts as we understand them are what the defendant told us," Patterson said Friday. "He went to the car, closed the garage door, started the car, returned to the house to get his wife, accompanied her to the garage, had a conversation with her and she indicated this was what she wanted to do, and then he left her. And that, simply, is what happened."

Sheriff's detectives began investigating Wednesday afternoon, when they were called by a Clarkston undertaker. Waters was held in custody overnight, then released Thursday afternoon to await a decision by the prosecutor.

Waters would not speak with newsmen at his white-paneled home near

downtown Clarkston. "He's not available under the circumstances," a nephew said at the door. "He's burying his wife tomorrow."

Services were yesterday in Clarkston United Methodist Church, with burial in Lakeview Cemetery.

"Who would judge him for what he did?" asked one of the town's barbers. "If my wife were suffering, I might do it. And I'd say, 'They may punish me, but it wouldn't be anything like what she was suffering.' "

"Everybody is in a state of shock," said a long-time Waters neighbor. "But nobody thinks it was a deliberate act."

That is the question the prosecutor will face next week. Patterson noted that many are viewing what happened on an ethical basis. "But we are going to have to look at it from a legal point of view."

Example #2: A Court Decision[4]

Loving v. Virginia (1967)

Two residents of Virginia, a Negro woman and a white man, Richard Loving, were married in the District of Columbia. They then returned to Caroline County, Virginia. There they were indicted for violation of Virginia's ban on interracial marriages. Their conviction was upheld by the Supreme Court of Appeals of Virginia. The central provision of the state's Racial Integrity Act was the absolute prohibition of a "white person" marrying other than another "white person." The term "white person" was defined in the statute.

OPINION BY MR. CHIEF JUSTICE WARREN
(Vote: 9-0)

Question—Does the statutory scheme of Virginia to prevent marriages between persons solely on the basis of racial classification violate the Fourteenth Amendment?

Decision—Yes.

Reason—The statutes violate both the Equal Protection and Due Process Clauses of the Fourteenth Amendment. "There can be no question but that Virginia's miscegenation statutes rest solely upon distinctions drawn according to race. . . . There can be no doubt that restricting the freedom to marry solely because of racial classifications violates the central meaning of the Equal Protection Clause. . . . The freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men. Marriage is one of the 'basic civil rights of man,' fundamental to our very existence and survival. . . . Under our Constitution, the freedom to marry or not marry a person of another race resides with the individual and cannot be infringed by the State."

Example #3: A Letter[5]

"An Unjust Law Is No Law At All"

. . . You express a great deal of anxiety over our willingness to break laws. This is certainly a legitimate concern. Since we so diligently urge people to obey the Supreme Court's decision of 1954 outlawing segregation in the public schools, at first glance it may seem rather paradoxical for us consciously to break laws. One may well ask, "How can you advocate breaking some laws and obeying others?" The answer lies in the fact that there are two types of laws: just and unjust. . . . I agree with St. Augustine that "an unjust law is no law at all." . . .

Let us consider a more concrete example of just and unjust laws. An unjust law is a code that a numerical or power majority group compels a minority group to obey but does not make binding on itself. By the same token, a just law is a code that a majority compels a minority to follow and that it is willing to follow itself. . . .

Let me give another explanation. A law is unjust if it is inflicted on a minority that, as a result of being denied the right to vote, had no part in enacting or devising the law. Who can say that the legislature of Alabama which set up that state's segregation laws was democratically elected? Throughout Alabama all sorts of devious methods are used to prevent Negroes from becoming registered voters, and there are some counties in which, even though Negroes constitute a majority of the population, not a single Negro is registered. Can any law enacted under such circumstances be considered democratically structured?

Sometimes a law is just on its face and unjust in its application. For instance, I have been arrested on a charge of parading without a permit for a parade. But such an ordinance becomes unjust when it is used to maintain segregation and to deny citizens the First Amendment privilege of peaceful assembly and protest.

I hope you are able to see the distinction I am trying to point out. In no sense do I advocate evading or defying the law, as would the rabid segregationist. That would lead to anarchy. One who breaks an unjust law must do so *openly, lovingly,* and with a willingness to accept the penalty. I submit that an individual who breaks a law that conscience tells him is unjust, and who willingly accepts the penalty of imprisonment in order to arouse the conscience of the community over its injustice, is in reality expressing the highest respect for law. . . .

The key characteristic which all value-incidents have in common is that they represent instances in which individuals or groups do or say something which indicates or implies what they consider to be important. This is a crucial characteristic, for students cannot be expected to identify the values of someone if the incident to which they

are exposed does not show that individual doing or saying something about which inferences about values can be made.

Now, how do we encourage students to think about incidents like these and to make inferences about the values which may be reflected? Exposing them to the value-incident may cause them to think about possible values reflected therein, but we cannot be sure. Once the reading (viewing, etc.) of the value-incident has been completed, therefore, it is important not only to encourage students to make inferences about the values of the individual(s) in the incident, but also to *discuss* their perceptions and reactions in order to help them understand and think about these inferences. One way to promote such discussion and, hopefully, understanding and reflection, is to ask and encourage students to think about certain questions on a fairly consistent basis (by "consistent" I mean more than just "once in a while"—at least once a week; more if possible, depending on the age, ability, and sophistication of the students), and in the same order each time (realize that it is the questions we are ordering and systematizing; not the answers which may arise as a result of these questions). A helpful rule of thumb is to proceed as follows:

- ask for facts;
- ask for inferences about reasons;
- ask for inferences about what the individual(s) values;
- ask for specific evidence to support the inference.*

Here is an example of one set of questions ordered along these lines.

1. What is this (story, poem, cartoon, etc.) about? or What is happening in this incident?
2. What do you think are (his, her, their) reasons for (saying, doing) this?
3. What do these reasons suggest to you is *important* to them? (What do you think they value?) Why?

Students should be encouraged to suggest as many *different* possibilities as they can in response to Questions 2 and 3. At this point, it is often helpful to prepare a *values-information chart* on the blackboard (or in student notebooks) as shown in Figure 4 (p. 176):

* As mentioned earlier, questions which ask for definitions are asked whenever the meaning of a word is unclear, and the teacher (or a student) thinks it necessary to have the word defined.

Figure 4
A VALUES-INFORMATION CHART

FACTS	← (INFERENCES) →	
	REASONS	VALUES
What happened?	Why we think it happened.	What the reasons suggest the individual(s) involved considers important.

Once the chart contains a sizable amount of information (the more the better), the class can be asked to focus on the third column of the chart and then discuss the questions which follow:

4. Why do you suppose people consider _____ (choose a particular value here from the third column) important?
5. Would you endorse such a value yourself?

The question sequence represents one example of a strategy that value-education-inclined teachers can employ to get students involved in thinking about what they and others value. Question 1 asks students to identify the acts and/or words of one or more individuals in a situation in which the values of these individuals come into play. This asking for facts, along with recording them on the chart, is most important, for students cannot do much thinking if they have nothing to think about. It also helps everyone in the class to begin on the same footing as far as knowing the basic facts of the situation.

Questions 2 and 3 ask a class to make inferences as to the reasons for, and values underlying, this behavior. (Notice that there are "correct" answers to Question 1, but not to Questions 2 and 3. The teacher should take great pains to encourage any and all responses to these questions.) Question 4 encourages students to think about why people value what they do.

A special remark needs to be made about Question 5. This is *not* a question to be debated. It is a question calling for a show of personal commitment on the part of the student. The teacher should accept all student responses here, no matter what they may be. Any or all students also have the right to answer or not to answer this question.

Comparing and Contrasting Values

The assumption underlying the above set of questions is that by encouraging students to make inferences about what people consider important (that is, their values), students will be clearer about what a value is, and perhaps more likely to think about what they value themselves. A single incident, however, is a very shaky foundation upon which to base an inference about a person's values. Asking students to look for indications of value in a particular instance is helpful in alerting them to the fact that actions and words are value-indicators. We can be mistaken, however, for the individual(s) involved may be trying to confuse or mislead us. They may be acting under duress or unusual stress. They may be acting a certain way out of fear or ignorance. The idea of looking at and comparing the actions and sayings of people over time is therefore an important concept for students to practice (and suggests one reason why the study of history is of value). Of help in encouraging this is to ask students to follow a given individual's words and actions (such as those of a public official) as reported in the press and other media over time. What contradictions do they notice? In what way(s) would they modify their original conclusions? And why? What *specific evidence* caused them to modify previous conclusions? (A focus on evidence for any conclusion is crucial. We shall discuss some different types of evidence later).

Figure 5 illustrates a chart that might be used to compare an indi-

Figure 5
COMPARING AN INDIVIDUAL'S ACTIONS AND STATEMENTS OVER TIME

Questions ↓	First Action or Saying	Second Action or Saying	Third Action or Saying	Etc.
What happened? *(Facts)*				
Why did it happen? *(Reasons)*				
What does the person(s) or group(s) consider important? *(Values)*				

vidual's actions (or statements) and reasons over time, along with differing inferences (conclusions) that students make about the individual's values. Along the top are entered the things to be compared (that is, different actions or sayings of the same individual at different times in his or her life). Down the left-hand side are the questions to be asked.

Not only are we interested in how a person's actions and words hold up over time (that is, his or her consistency), but also we are interested in how different people act and what they say in the same situation. How can we help students to compare and contrast the actions and sayings of different people in the same situation? Simply by using the same procedure just described and expanding it somewhat. Our initial steps are the same as before:

- ask for facts;
- ask for inferences about reasons;
- ask for inferences about what the individual(s) values;
- ask for specific evidence to support the inferences.

This information can be charted or recorded in a retrieval chart, kept individually by students in their notebooks, or jointly on a bulletin or chalkboard. Students can then be encouraged to ask the same three questions of other individuals who are involved in the same situation (or a similar situation at another time), in each case filling in the data we obtain on the *same chart*. We then proceed as follows:

- ask for differences between the two (three, etc.) instances as far as actions or words go;
- ask for similarities among the two (three, etc.);
- ask for conclusions about people's values in this kind (or kinds) of situation.

Here is an example of the kind of value-incident that can be used. Imagine a situation in which a teacher is administering an examination and is called out of the room momentarily, and three girls all behave differently. One asks another girl for the answer to a problem on the examination; the second refuses to give her the answer; the third then shows the first girl her paper. Using the sequence suggested above, Figure 6 (p. 179) shows a possible series of questions and a retrieval chart for student responses to help students identify and then compare and contrast possible values implied in this incident.

Figure 6
COMPARING AND CONTRASTING THE VALUES OF DIFFERENT INDIVIDUALS IN THE SAME SITUATION

Questions ↓	Girl #1	Girl #2	Girl #3
1. What happened?			
2. Why did this happen?			
3. What do you think this girl values?			
4. What makes you think she values this?			
5. What differences do you notice in what the girls did?			
6. What similiarities do you notice in what the girls did?			
7. Why do you think people act the way they do in these sorts of situations?			

As before, Question 1 asks students to identify what the different individuals in the situation said and/or did. Questions 2 and 3 ask students to make inferences as to the reasons for, and values underlying, this behavior. Question 4 asks that students try to connect the facts, reasons, and values in some way. We are asking students to indicate what specific sayings, actions, and/or reasons cause them to think the individuals involved value what they do. Questions 5 and 6 ask for observed differences and similarities in the behavior of the individuals in the incident, while Question 7 asks for tentative conclusions which might explain why people act in certain ways in various situations.

The Importance of Empathy

If students are to be able not only to *identify* values, but also to *understand* why people value things differently from what they value, they must be helped to empathize with others who live in situations and cultures different from their own. It therefore seems logical to assume that extending sensitivity to different people in different situations will help them become more empathic. How might this be done?

In order to increase sensitivity, students need to be provided with opportunities to understand how other people *feel*, along with opportunities to *identify with* the feelings of these people, and then to react

with feeling themselves. If one accepts these objectives, it follows logically that teachers must encourage students to participate in many different types of experiences which provide contact with different people doing different things. Here are a few examples:

1. Sit in the accident-emergency room of a large hospital.
2. Attend a church service of a faith other than your own.
3. Interview some members of the Salvation Army.
4. Go on a field trip to a juvenile home or prison.
5. Talk to the owner of a small hardware store or delicatessen; then watch how he or she does business. Compare this with what goes on in a large department store or supermarket.
6. Take a walk through a neighborhood unlike your own. Talk to some of the people in the neighborhood.
7. Ask a police officer to respond to questions from the class.
8. Eat at an unusual restaurant and talk with the waiter.
9. Take a walk on a littered beach.
10. Watch the people in a florist's shop.
11. Attend a meeting of the Chamber of Commerce, Elks Club, Rotary, or other civic group.
12. Ask classmates to fill in (anonymously) the sentence "Dignity means _____," and then have someone read the completed versions to the class.
13. Listen to a tape recording of Dr. Martin Luther King's speech, "I Have a Dream."
14. Read "Interracial Marriage and the Law," *Atlantic* (October 1965).
15. Listen to "She's Leaving Home," by John Lennon.

Merely having students participate in these sorts of experiences, of course, will not be enough.* Students must also be encouraged to share their perceptions and to talk about the feelings they had as they engaged in these experiences. A helpful rule of thumb is to proceed along the following lines:

- ask for facts
- ask for inferences about feelings
- ask for inferences about reasons
- check for similar or different feelings
- ask for conclusions about feelings in situations like this

* The particular experiences in which students are to be engaged will always depend on the sophistication of the students and the teacher's perceptions of the type of experience which is appropriate to their needs and abilities.

Here is an example of a set of questions organized to do this:

1. What did you do (Where did you go, What happened to you, etc.)?
2. How did you feel? Why?
3. Does anybody else feel this way? Did some of you feel differently?
4. After listening to the experiences that people have had, what can you say about people and how they feel in situations like this?

Question 1 asks students to describe the situation in which they were involved and what they did. Question 2 asks them to relate their feelings — their emotional *reactions* to what they experienced. Question 3 allows other students to realize (hopefully) that many people may feel things quite differently, but also that many people frequently *feel quite similarly to the way they do.* Question 4 then asks students to draw conclusions about people's feelings.

The assumption underlying these activities and questions is that by forming and comparing inferences about their own and others' feelings in certain instances, students will become more aware of the similarities of different people's feelings in various situations, and thus be better able to understand how people feel and accordingly act.

Role-Playing

An excellent way to help students identify with the feelings of others, and to react with feelings themselves, is to engage them in role-playing. Role-playing involves having students act out roles of real or imaginary individuals in various situations. It is especially helpful in getting students to think about how historical characters might have felt. How can we do this?

Students must first be presented with a story (film, filmstrip, etc.) in which an individual (or group of individuals) is faced with a problem in which he (or they) must make a decision. It is important that the incident described present real or realistic individuals caught up in a believable dilemma, one that students do not characterize as "phony." Here are a few examples, including some suggested by the case studies presented in this Yearbook:

- You are an Anne Hutchinson living in the year 1637, and strongly opposed to established Puritan doctrine concerning salvation. Your conscience tells you to speak out, though you realize that if you do so, you will be banished into the wilderness. What do you do?

- You are a British officer living in the year 1776, and opposed to King George's decision to make war against the American colonies. You are asked to sign a formal protest against the king's decision, but you realize that if you do so, your army career is certain to be jeopardized. What do you do?
- You are a junior officer serving on board the *U.S.S. Chesapeake* in 1807. You have just learned that the British frigate *Leopard* intends to search your ship for British sailors, and that the captain of your ship intends to resist. You realize that the *Chesapeake* is ill-prepared to engage any British warship in battle, and thus you question the wisdom of the captain's decision. You feel you should speak out, but junior officers are not supposed to question the orders of their superiors. What do you do?
- You are a woman living in New York in 1854. Your husband doesn't approve of your participating in the feminist movement, nor of some of your friends in the movement. You wish to convince him otherwise. What do you do?
- You are a citizen living in 1837. A group of your friends plans to physically attack and then tar and feather the Mormon leader Joseph Smith. They want you to join them and suggest you are a coward if you do not. What do you do?
- You are a newspaper editor living in the year 1898, writing editorials urging that the United States not become involved in war with Spain over Cuba. Most of your pro-war business friends view you as a crank, and warn you that unless you cease such efforts, they will think twice about taking out any more advertisements in your paper. What do you do?
- You are an assistant to President Harry S. Truman in the year 1945. The President has called a meeting of his advisors to ask their opinions on the use of the atomic bomb in the war against Japan. You believe that the use of the weapon is immoral and may have long-range consequences that no one can now foresee, yet you realize many lives may be saved if it is used. What do you do?

Here are some suggested guidelines to follow when engaging students in role-playing incidents like those above:[6]

- Allow students who seem to have identified with a particular character to assume his or her role. If necessary, ask for volunteers.
- Allow the role-players time to plan briefly what they will do and how they will do it.

- Prepare the audience (usually the rest of the class) to participate as observers. To enhance awareness of what a role involves, and to encourage consideration of alternative ways to resolve the acted-out character's dilemma, the remainder of the class can be assigned to various observer tasks. They can be asked to judge the degree to which the role depicted is, in their estimation, realistic, or how they think various individuals felt as the "scene" progressed. Shaftel[7] has suggested that it is advisable to warn a beginning group that has had little or no experience with role-playing that laughter spoils role-playing quickly, but that attentive observation enhances it.
- Enact the role-playing. It is important here to inform students that they are not being "graded" or rewarded for their acting ability. The express purpose of the role-playing is to gain some insight into the feelings and values of other people. Also, allow others to help a student portray a character (if she gets stuck) by placing their hands on her shoulder and speaking for her.*
- Discuss what took place. How realistic was the role-playing? How did those who did the role-playing feel? The questions on pages 181 and 182 can be helpful at this point.
- Re-enact the dilemma. After a discussion of the first enactment has taken place, the role-players can re-enact their roles in an attempt to make them more realistic, or roles can be switched, or new players may assume the roles in order to present some new interpretations of what might happen.
- Discuss the new enactments.
- Encourage the class to draw some conclusions about what it felt, and how it thinks people in similar situations might feel, and why. Questions like "Why do people act the way they do in situations like this?" or "Would most people feel this way in a similar situation?" are helpful here.

A word of caution at this point. It is important that a teacher not indicate approval or disapproval of those feelings which he personally endorses or does not endorse. A student's reactions concerning her experiences in the world are uniquely personal and private and should be respected as such, provided that they do not impose on others.

Even though we may disapprove of a student's feelings, we need to accept the student as a person of sensitivity and worth if we are to help her understand and accept the fact that different kinds of feelings can be experienced in the same or similar situations. This can be done

* With the student's permission, of course.

in a number of ways. A teacher can listen carefully and respond in a nonjudgmental manner (e.g., by nodding and saying "I see"). He can restate what a student has said while indicating that he understands what the student is trying to express ("You said you felt very uncomfortable when you moved to a new town and began your freshman year in high school away from all your old friends. I can understand that kind of feeling."). He can verbally support the feelings a student expresses ("I know what you mean, Paula; I've felt that way myself.").

The point being made here is that when it comes to feelings, the teacher must try not to judge. The teacher should, however, do his best to engage students in a rich variety of experiences so that they can continually expand their awareness and understanding of the feelings of other people.

The purpose of "feelings experiences" is to promote what Piaget called decentering — the ability to step inside another person's shoes and see the world from his point of view. This comes about only gradually, and for many people never seems to come about at all. Educators have not tackled this task very systematically, and a conscientious effort to do so seems warranted. If we are to help students appreciate that all human beings are persons, we need to make the ways of various peoples around the globe and in our own country seem less strange, and more believable. We can only do this by helping students as much as possible to "get inside" the heads of people in different groups and cultures and "see" the world through their eyes. This is certainly a very difficult task, but I think there are ways by which we can make some progress in this regard. Some awareness of how others feel, for example, is certainly better than no awareness at all.

Hanvey has suggested four levels of progressively greater awareness that we might help students strive to attain.[8] I would modify his hierarchy a bit to illustrate some possible goals that teachers might consider with regard to developing empathy in students (see Figure 7, p. 185).

A child in the primary grades might be expected to be able to identify some of the more obvious physical differences and similarities which exist with other children, such as hair, skin, eye color, height and weight, foot and hand size, fingerprints, straightness or curliness of hair, and the like. As a child moves upward through the middle school, she might be expected to identify the more obvious practices of a variety of different cultures, particularly the stereotypical to which those new to a culture (including our own subcultures) are usually exposed (e.g., the overly polite manner of most Japanese, or the tempo at which Micronesians complete a task). Such exposure, which usually concentrates on the presentation of stereotypes, is the most frequent kind of

Figure 7

DEGREES OF EMPATHY

Approximate Age	Grade Level	Focus	Means	Outcome (Awareness) Desired	Frequent Student Reactions
1-7	Preschool k-2	Individual physical differences and similarities.	Incidental and systematic observation; superficial comparing and contrasting; films; pictures.	Awareness of obvious physical differences and similarities.	Surprise; delight; awe; fear.
8-11	3-6	Superficial or very visible cultural traits; stereotypes.	Textbook, guest speaker, *National Geographic*, vacation trips, pictures, more detailed films, filmstrips, simple role-playing.	Awareness of marked (pronounced) differences of individuals in other cultures, and understanding of how the other culture differs in general from one's own culture. Awareness of fact that other people often do different things than self, and also that they do things differently.	Disbelief; amusement; irritation; hostility.
12-14	7-9 (Junior High)	More subtle and important cultural traits that differ markedly from one's own culture.	All of the above plus more involved role-playing; intellectual analysis.	Awareness of differences in feelings, attitudes, beliefs, which produce differences in cultural traits and different viewpoints. Awareness of one's own feelings toward others.	Doubt; uncertainty; some debunking of own practices and customs. Sentimentalism.
15-18	10-12 (Senior High)	More subtle and important cultural traits that differ markedly from one's own culture.	Quite complex role-playing; emphasis, however, on intellectual analysis.	Awareness of the feelings and attitudes of others, as well as analysis and evaluation of own feelings toward others.	Intellectual awakening; understanding.
18-?	13-? (Junior College, University, Graduate School and beyond)	Living in another culture.	Total immersion in another culture.	Understanding of another culture (group) from the point of view of an insider.	Subjective familiarity.

instruction that most children receive about other cultures and subcultures.

As a result, it is not surprising that ethnocentrism develops. Students have had little, if any, opportunity to experience the deeper and more subtle cultural traits which are so important if any kind of real understanding is to occur. Thus throughout the junior and senior high school, teachers should do their best to help students to get beneath the surface, obvious characteristics which people display, and to think about the reasons why people believe and act as they do, as well as how the students themselves feel about other people, and why. A growing understanding and acceptance (though not necessarily approval) becomes a major objective.

Role-playing can be of some help in this regard, but it is by no means sufficient. Continued identification and analysis of the reasons underlying actions, beliefs, and feelings are absolutely essential. That is a tremendously challenging task. Yet even this is not always enough. We also need to develop ways to promote the subjective familiarity with a people which comes from participating in another culture *as an insider*. We don't know very much about how to do this in schools at present (though student exchange programs are a step in this direction), but it remains a goal worthy of all our energies.

Analyzing Value-Claims

It was mentioned earlier that some of the statements which people make provide clues about what they value. Statements which say what a person likes, or what he thinks should be done, are examples. As we said before, such statements are called value-judgments.

For many people, however, the term value-judgment has a somewhat negative or even frivolous connotation ("Oh, that's just your value-judgment!"). As a result, some scholars prefer to use the more neutral term "value-claim" instead. Three types of value-claims[9] are worthy of our attention here, for they differ considerably in the number of people to whom the claim is intended to apply, and hence in significance. Let us look at some examples:

1. I like to read about past events and places.
2. I think an international police force would be a good thing.
3. This Lincoln penny should be worth $500.00 in hard cash from any rare-coin dealer in the country.
4. You ought to be able to get at least $40,000.00 for your house.
5. Thomas Jefferson was a great man.

6. The best kind of society is one in which all people have certain rights guaranteed them by law.
7. The smoking of marijuana should be legalized.
8. The United States should cease giving aid to dictatorships.

Statements 1 and 2 represent *personal value-claims*. The speaker in each case is denoting what he personally prefers. Such statements are indications of taste. They reflect an individual's likes and dislikes. The individuals involved are not arguing or implying that everyone should hold such a preference (that others should also like what they like); they are simply indicating what they personally prefer.

Personal value-claims should be encouraged in social studies classrooms, for they can help awaken students to the fact that there is much in the world to be appreciated, and that not everyone likes (or has to like) the same things. A corollary is that teachers should do their best to engage students in as many rich and varied experiences as possible in order to increase the students' awareness of what the world has to offer, thereby giving them an opportunity to expand and refine their tastes. Viewed in this sense, activities frequently ignored or underemphasized—such as visiting homes for the elderly and talking to the residents who live there, or browsing through an art exhibit, or walking through an arboretum, or tasting different foods, or listening to different types of music—followed by encouraging students to discuss what they liked or didn't like, become strong possibilities for teachers to consider for inclusion in their classroom routine.

A word of caution should be made about personal value-claims, however. As long as an individual's preferences do not harm others or violate their basic rights in any way, a student does not have to justify what she likes. The personal reactions of students to their experiences in the world are uniquely their own, and should be respected as such. However, when a student claims that what she finds good (effective, worthwhile, beautiful, etc.) is also good for others, it is a different matter. The student has made a different type of value-claim. Then it *is* the teacher's job to help other students to investigate and analyze the claim.

Statements 3 and 4 represent *market value-claims*. This type of value-claim is an assertion that a certain group of people will pay a certain price in order to obtain a given commodity or engage in a particular activity. For example, an individual might assert that a given house is worth $40,000 in the open marketplace of people who are buying and selling houses. This is not the same sort of thing as saying "I like your house."

Consider another example. The leaders of a large, wealthy nation, interested in trying to decrease the amount of global pollution, might say to a smaller nation that is trying to industrialize: "If you will agree to limit your industrial development to a certain level every year and not exceed that level, it will be worth a ten percent increase in aid from us."

The speakers in both of these examples are giving their estimate of what a certain group of people (house buyers; the larger nation) will pay at a given time to obtain something that they desire (a certain type of house; a desired level of industrial development on the part of a smaller nation). Now this value (the market value at a given time) may change over time; the amount or price that the house buyers or larger nation will be willing to give or pay may increase or decrease, but these statements are not merely expressions of preference or taste. They are assertions that a given object will bring a certain price in the marketplace of interested buyers and sellers, or that a group of people will pay a certain amount (in money, aid, labor, etc.) in order to obtain something (an object, action, policy, etc.) that they desire.[10] Since market value-claims do not occur very often in social studies classrooms (this omission itself is an indication of values), I shall restrict my comments hereafter to real value-claims, the type which usually produces the greatest number of arguments.

Statements 5 through 8 represent *real value-claims*. They assert that a certain thing is of greater worth or merit than other similar and available alternatives because, other things being equal, it scores higher according to a particular set of criteria (e.g., time, energy, skill, some combination of these, etc.). Real value-claims appear in two forms. Some are assertions about the worth or quality of something (statements 5 and 6). Let us call this type *definitional* value-claims. Others are statements which indicate that some person or group should do a particular thing or follow a given course of action (statements 7 and 8). Let us call this type *propositional* value-claims.

Thus, when an employer claims that "John is my *best* worker because he gets the most work done in the shortest time with the fewest mistakes" or a student states that an equal distribution of the world's wealth would be *better* than the way wealth is presently distributed because fewer people would die of starvation every year, they are not merely expressing a preference; they are claiming that a particular thing or group of things is better than another thing or group of things because it outweighs its alternatives in terms of a certain set of applicable criteria (in the case of the employer, amount of work done, speed, number of mistakes; in the student's case, number of people who avoid starvation). The statement that the best kind of society is one in which all people

have certain rights guaranteed them by law is a real value-claim. And when an individual claims that a world in which the possession of armaments by nation-states is limited to machine guns (i.e., no nation-state should possess any weapons more powerful or destructive than machine guns) is superior to the world in which we presently live because . . . (more money will be available to relieve human misery and deal with ecological concerns, fewer human beings will be killed, etc.), he is claiming something for an alternative world system that the present world system does not possess. He is not merely giving his personal feelings about the matter.

A special type of real value-claim is the *moral value-claim*. This type of value-claim asserts that a particular alternative is better than others because it is more just, more humane. Moral value-claims arise as we try to determine what is the *right* thing to do in a certain situation. The question of what is "right," of course, is one that has been debated for centuries. And no one has found *the* answer for all people. There is one fundamental principle, however, that offers considerable potential as a basis for justifying the rightness or wrongness of actions. As argued by many scholars,[11] it is the principle of justice, the notion of *prima facie* equality of basic human rights.

As a basic principle, justice means that all people involved in a dispute are entitled to have their claims *considered* equally in the settlement of that dispute. Equal consideration does not necessarily mean equal treatment, however. As Scriven points out, "when the constitution of a country or of an organization of countries talks about all people being equal, it does not imply that they are all equally strong, intelligent, or virtuous, and it does not imply that they should receive equal incomes; it simply means that . . . they must be given equal consideration in the formulation and application of the law of the land and the actions of its government and people."[12]

*Un*equal treatment, however, can be justified only when it can be shown that such is absolutely necessary to protect the basic rights of everyone involved in the dispute. What is a basic right? Basic rights are those powers or conditions that a society values, and to which the members of the society are entitled by law or by custom. In the United States, the first ten amendments to the Constitution—the Bill of Rights—are examples.*

Students, like all citizens, are presented with contradictory claims every day of their lives. It is only logical to suggest that helping them

* A comprehensive list of rights with which all social studies teachers should be acquainted is the Universal Declaration of Human Rights, as approved by the General Assembly of the United Nations in 1948.

analyze and assess such claims will be to their benefit (see Figure 8). For as they learn the differences between these types of claims, they become aware that value-claims are usually made for a reason. And seeking out and assessing these reasons can help them determine whether the claim is one which they would make themselves.

Analyzing Real Value-Claims

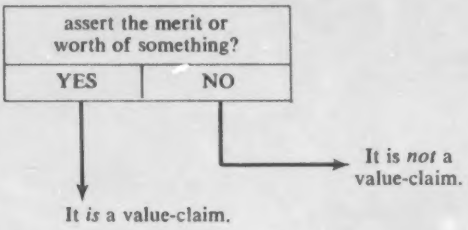
If individuals are to assess definitional value-claims intelligently, they must first of all be clear about what the claim means. For example, if someone remarks that Joanna is an excellent worker, we need to know what the person means by the term *excellent* (that is, what qualities, skills, etc., an excellent worker possesses) before we can assess Joanna's work. How can we tell an excellent worker from one who is only so-so? What characteristics does an excellent worker possess that a poor or mediocre worker lacks? The teacher's task here is to help the student define the term, and then to ask the class to consider whether the individual involved (Joanna) fits the definition—i.e., possesses the characteristics.

There are several ways for a student to define a term. She can translate it into other terms that are more easily understood (e.g., "excellent" work means work "completed on time according to predetermined specifications"). She can point to some individuals whom she considers to be *examples* of excellent workers, describing the characteristics they possess that in her judgment make them excellent. The more characteristics she can identify, the better, since it then becomes easier to determine the degree to which a given individual deserves the term. (The more characteristics a person must possess to fit a given definition, of course, the more difficult it becomes to find such individuals.) Newmann[13] has suggested three attributes that can be used as guidelines in determining if a particular definition is adequate. It should be noncircular, meaning that it should not use in the definition language that is the same or only slightly different from the term being defined (e.g., defining a democracy as a "country with a democratic government"). It should be convertible, meaning that the term to be defined should "equal" the definition (e.g., the definition of a slave as "a human being who is the legal property of another" is equally true when reversed). Lastly, it should be sufficiently precise to distinguish among examples that differ in subtle ways. It is for these reasons that the more characteristics that can be identified when defining a term, the better.

However, when a student defines a term, it is quite possible that other students will disagree with her definition. When that happens, the

Figure 8
TYPES OF VALUE-CLAIMS

1. Does the claim (the statement):



2. Does it:

refer to a
person?
group?
suggest what he or she likes or prefers?
YES
NO
indicate what is valued by the group?
NO
YES
It is a personal value-claim
It is a market value-claim
state or imply what should be done, or that something is better than other similar and available alternatives, considered from the point of view of all involved?
YES
NO
It is a moral real value-claim
It is a non-moral real value-claim

teacher has two basic alternatives to fall back on. He can encourage the class to consult an authoritative source, such as a dictionary or specialized reference work (e.g., to obtain an official definition of "tort," we might turn to a standard textbook on law). Some words, of course, are not to be found in dictionaries. When this is the case, he can try to get the class to agree to stipulate a meaning—that is, to agree that a given term means such and such in this particular instance so that discussion may proceed. If the class is unable to agree on a stipulation and no official definition for a term exists, the class will have no recourse but to "agree to disagree" for the time being and continue to search for meanings upon which class members can concur.

If students are to assess propositional value-claims intelligently, they must not only be clear about the value terms involved, but also they need to consider what might happen if the claim were to become reality. Let us consider an example from one of the cases presented in Part I. Suppose, during a class discussion in American History, that a student claims that Jefferson and Madison should have acted *more forcibly* against British impressment of American sailors during the 1790s and early 1800s. Other students disagree, arguing that the new nation was in no position to do anything more than it did at the time. Helping students to understand the specifics of the claim and to come to some defensible conclusions of their own requires that a teacher engage them in several operations. The key term in the claim must be defined, and the consequences that might result from acting more forcibly identified and evaluated.

First, the problem of defining the disputed term. There are two things the teacher can do. He can ask the student for examples of a forcible action. Does "forcible" mean that Jefferson and Madison should have made stronger protests to the British government? severed diplomatic relations? had British press gangs imprisoned? sanctioned the boarding of British ships and the seizing of British sailors? paid bounties to British sailors to desert to American ships? declared war against Great Britain in 1807? Or, the teacher can ask students for defining characteristics of a forcible action (e.g., must there be some type of military activity involved for an action to be considered "forcible"?).

When the meaning of the key term in the value-claim is clear (at least for the purposes of the discussion at hand), the matter of consequences needs to be investigated. What might have happened if the policy being advocated had been followed? Are there any examples of such a policy being followed? If so, what happened? These are factual-type questions, and require students to do some research to see what they can find out. Historical records, documents, photographs, eyewitness accounts, news-

paper reports, diaries, journals—all are grist for the mill. As much relevant and documented information as possible needs to be collected.

All data offered as evidence to support or refute the likelihood of a consequence occurring must then be checked for relevance and accuracy. The relevance of data can be determined by checking to see if it refers to the particular consequence being considered. Similarly, the accuracy of data can be ascertained by determining if what is presented or referred to is correct—that is, not in error, fake, or revised in some way.

When students are unable to find either historical or contemporary parallels, the teacher must encourage them to *think out* what might have happened. In our previous example, would the United States have benefitted in some way if Jefferson or Madison had acted more forcibly? If so, how? What about Great Britain? What might she have done? What might have been the repercussions of more forcible action on British-American relations in the future?

Students will most likely predict consequences consistent with their previous inclination toward the policy being advocated. Those in favor of forcible action will predict favorable consequences; those against such action will predict unfavorable consequences. Usually, however, they are unaware of other possible consequences, and it is the teacher's responsibility to present additional examples which illustrate the consequences of accepting a given policy.

It is important that students obtain as much relevant and documented information as possible. I cannot emphasize this too strongly. Students cannot make intelligent predictions about consequences if they have insufficient data with which to work.

The Importance of Evidence

A student can present a number of different types of evidence to support her assertion that a particular consequence or set of consequences will occur. Such evidence includes personal belief, authoritative opinion, logical reasoning, personal observation, or documentation.[14]

Personal belief. One kind of evidence that a student might offer in support of a predicted consequence is that she personally believes that what she asserts is so. Evidence to support her claim is her own personal, unique, and subjective opinion. When pressed to support this personal belief—that is, when asked, why do you believe this? or why do you think this is so?—the student may fall back on *intuition*—that is, she may state that she intuitively "knows" or "feels" that what she is claiming is so. Here is an example:

Joan: The British wouldn't have done anything if Jefferson or Madison had imprisoned British press gangs caught on American soil.
T: What makes you think they wouldn't? (Request for evidence)
Joan: I just have a feeling that they wouldn't.

Joan's evidence in this instance is her own opinion or "feeling." The major difficulty with this kind of evidence, however, is that it is essentially private in nature. Joan is not providing the other students in her class with any data that they can evaluate to see if such data logically or empirically support the likelihood of the consequence occurring. Corroboration of the estimated consequence is being argued on private (i.e., non-verifiable) rather than public grounds.

Notice here that getting students to offer their opinions in the classroom is to be desired—in fact, it is essential if value discussions are to take place. But offering an opinion that is to be investigated and subsequently supported or refuted on the basis of evidence is not the same thing as offering an opinion *as* evidence itself.

Authoritative opinion. A second kind of evidence that a student might offer is the consensus or agreement of others besides herself. Much of the strength of this kind of evidence, of course, depends on the reputation of the "others" whose opinion she is offering for support.

Suppose, for example, that Joan supports her statement that "the British wouldn't have done anything if Jefferson or Madison had imprisoned British press gangs caught on American soil" by offering as evidence a consensus of opinion among several noted historians, viewed as authorities or "experts" in the field of American diplomatic history. This might be considered by many people as considerable evidence to support her statement.

A question remains, however, as to the degree to which one is willing to accept, or is justified in accepting the views of experts. Whenever the viewpoint of an authority is cited as evidence by a student to support a claim, the rest of the class is faced with the question of the authority's *reliability*. Ennis suggests the following criteria as a list against which to test the value of an authority's opinion.[15]

1. He has a good reputation.
2. The statement (claim) is in his field.
3. He was disinterested.
4. His reputation could be affected by his statement, and he was aware of this fact when he made his statement.
5. He studied the matter covered by the statement (i.e., the student's claim).

6. He followed accepted procedures in coming to decide that he was entitled to make his statement.
7. He was in full possession of his faculties.
8. He is not in disagreement with others who meet the above criteria for authorities.

Ennis points out that the joint satisfaction of all these criteria makes a very strong case for considering the view(s) of an authority in a particular instance as reliable.

The danger with authoritative evidence, however, lies in the fact that authorities can make mistakes too. In Galileo's day, for example, the authorities of the time were convinced that the earth was the center of the universe. Until quite recently, medical authorities have believed that bleeding patients was a cure for fever. Just because an expert "knows" more than a layman does not make him infallible.

Personal observation, documentation, or experimentation. A third type of evidence that a student might offer is a statement that she has personally observed (seen, heard, felt, etc.) or performed whatever she is referring to. This kind of evidence has its limitations too, of course, since the student now needs to offer proof that she has observed correctly. The factor of personal bias may enter in since people are often influenced by prejudices of which they are unaware. Whenever possible, therefore, students should be encouraged to find and present photographs, pictures, records, or tapes which illustrate that an event has occurred. While this type of evidence is difficult to obtain on a regular basis, there are occasions when an audio or visual reproduction of an event is available. (This is particularly true with regard to using pictures from newspapers and magazines, and hence why it is helpful for a teacher to insure that his class subscribes to a variety of newspapers and news magazines encompassing a fairly wide spectrum of political and other opinion.)

Some claims lend themselves to experimentation by students—that is, the student can actually "try things out" to see what happens. Consider this example:

Joan: You can find more information about how nineteenth-century Americans felt about impressment by reading some of the newspapers of the time than you can in any articles or books written by historians.

Miguel: No, you can't.

T: Well, check it out. Why don't both of you do some digging into this? Find as many articles and books on impressment as you can and compare them with some of the newspapers of the period. See which has the most information about how people felt about the issue.

Logical reasoning. A fourth type of evidence that a student might offer to support the likelihood of a consequence occurring is to show that her conclusion results from a logically valid piece of deductive reasoning. In short, that her claim follows logically from certain premises, as in this example:

a. All men are mortal.
b. President Ford is a man.
c. Therefore, President Ford is mortal.

These three statements represent what is commonly known as a *syllogism.* The first statement is called the *major premise.* The second statement is called the *minor premise,* while the third is the *conclusion.* A set of one or more premises, together with a conclusion that necessarily follows from the premises, is called a valid argument. An invalid argument is one in which the conclusion in an argument does *not* necessarily follow from the premises of the argument. Two questions need to be asked of all syllogisms: Does the conclusion logically follow from the premises? Is the conclusion true? In the example above, the conclusion is true because both premises are true. Whenever the major and minor premises are both true, the conclusion *must* be true.

Let us consider a second example, however:

a. All British ship captains supported a policy of impressing American sailors in the early 1800s.
b. Adam Thomas was the captain of a British man-of-war at that time.
c. Therefore, he supported a policy of impressing American sailors.

In this case, the conclusion may be false. But why? Nothing seems wrong with the *reasoning* involved here. The reasoning *is* correct, but the conclusion arrived at might be false—because the major premise is false. There were some British captains who genuinely tried to stop the impressment of *bona fide* American citizens.

Notice that both the major and minor premises are factual assertions —their truth or falsity can be determined by obtaining proof of some sort (e.g., consulting naval records of the time, newspapers, letters, diaries, etc.). When a student offers a deductive argument as evidence, one task of the teacher is to help students determine whether the premises of the argument are true or false—i.e., whether or not some proof of their existence or occurrence can be found.

It is important, therefore, for teachers to help students distinguish between valid reasoning and truth. It is a common practice in a discus-

sion for one person to try to convince others to accept his point of view by presenting a valid line of reasoning that is based on false premises. The conclusion that follows may then be *logically* valid, but *factually* false. If either of the premises in a deductive argument is false, the conclusion *may* be false, though not necessarily so.

One final note of caution regarding syllogistic arguments. An argument may be valid and the conclusion or conclusions stemming from it true, even if *both* premises are false. Here is an example:

a. Impressment is the same thing as murder.
b. Murder was favored by most British ship captains.
c. Therefore, impressment was favored by most British ship captains.

The argument is valid and the conclusion true, even though both premises are false, since the conclusion logically follows from the premises.

The lesson to be learned from the above example is a simple one. The fact that one or more premises in an argument is false does not necessarily mean that the conclusion which follows is false; nor does the fact that an argument is valid necessarily mean that the conclusion is true. Only when both premises are true and the argument is valid *must* a conclusion be true (See Figure 9).

Figure 9
COMBINATIONS OF VALID ARGUMENTS

Major Premise	Minor Premise	Conclusion
True	True	Must be true
True	False	Can be either true or false
False	True	Can be either true or false
False	False	Can be either true or false

Just because an argument is valid does not mean that its conclusion is true. Teachers should always have students determine whether proof of the truth or falsity of premises exists.

Verifying Evidence

When a student has presented her evidence (no matter what kind it is), the matter of *verification* arises. Does the evidence presented provide support for the likelihood of the consequence occurring? If the evidence offered is only personal or group belief, the claim cannot be verified, but must remain purely an indication of personal or group preference. If the evidence is authoritative judgment, the authority's reliability must be determined and his or her arguments either logically or empirically supported or refuted. If the evidence consists of a conclusion based on logical reasoning, we must check to see if the argument is valid and the premises true. If the supporting evidence consists of certain actions that have been performed or certain accomplishments that have been achieved, we must check to see whether the alleged actions were performed or the accomplishments achieved in similar situations.

Before any profitable discussion of consequences can take place, however, students must realize that the acceptance of different kinds of evidence may result in quite different assessments. They need to realize that different individuals may come to quite different decisions depending on the kinds of evidence they accept. It is for this reason that it is important for teachers to help students realize that there are different kinds of evidence that can be used to support or refute an argument. They must help them understand that different people, depending on their background and experience, view certain kinds of evidence as more acceptable than other kinds and that they should consider what kind is most convincing with regard to a particular proposition and why. Whether a given statement is "true" or "good" can only be determined by knowing what evidence those who make the statement will accept in its support. Agreement during a values investigation and discussion is likely to be difficult to obtain, however, unless the same evidence is used.

Analyzing Value Conflict

As students begin to identify and to think about values and value-claims they will soon realize that they may conflict. For example, consider the hypothetical (but representative) case of Rob Smith. For as long as he could remember, Rob had heard his parents emphasize the values of honesty and loyalty. A "good" person was one who always told the truth and stood by his friends. One of Robert's friends, however, copied from Robert's paper during a history examination without Robert

realizing it at the time. The next day the teacher asked both Robert and his friend to explain the fact that their two papers were identical, even to having the same crossed-out words. Robert now knows his friend copied from his paper, and wants to be loyal to him; yet he also wants to tell the truth, since he knows his teacher and his parents will be disappointed in him if he doesn't. What should he do?

People often find themselves in situations where their values conflict. Loyalty is important . . . but what if the person to whom one is being loyal has broken the law? Freedom of speech is viewed by many as a cornerstone of democracy . . . but what if a speaker is encouraging a crowd to lynch someone? Honesty is valued by most people . . . but what if the mother of one of your friends asks you if you like her rhubarb pie—and you don't?

Value conflicts may be not only intrapersonal—within one person, as the above examples suggest—but also interpersonal—between individuals. Arguments over how to reduce crime in our society are a case in point. Some argue for longer sentences and harsher punishments for lawbreakers, for building more jails and hiring more police. Others want more rehabilitation institutions such as work camps, farms, and hospitals where criminals can be given psychological help, medical treatment, and vocational guidance, as well as the hiring of more psychologists and psychiatrists to study and report on criminal behavior. Conflicts in values often surface when people make different value-claims about the same thing.

Value conflict is a fact of life. It is realistic, therefore, for teachers to recognize (and help students recognize) this fact and to realize that such conflict may often lead to inconsistencies in behavior. How can students be helped to realize that values often conflict? A teacher might begin by having students identify, discuss, and evaluate alternative courses of action, along with the consequences of these alternatives. This would increase the students' awareness of value conflicts. Furthermore, such study (hopefully) would help students to shift from supporting one value to supporting one or more others that they believe are more worthy of their support. They would begin to realize that there are many different ways of dealing with a particular problem, and thus become more willing in the future to search for and consider a variety of possible solutions rather than insisting on only one as always being "right."

How might we test out these hypotheses in the classroom? We start by presenting students with a value-dilemma—an historical or contemporary situation, argument, or illustration in which an individual (or group of individuals) is faced with a *choice* between two or more conflicting alternatives, both of which are valued to some degree. Examples

would include the dilemma of the captain of the *Chesapeake* over whether to give in or fight the *Leopard;* Susan B. Anthony's dilemma over whether to register and vote or not; the dilemma faced by those people who tarred and feathered Joseph Smith as to whether to participate; or, in a more contemporary sense, the dilemma faced by a policeman having to decide whether he should allow a soapbox speaker to continue speaking to an increasingly angry and threatening crowd or order him to stop and thus possibly infringe on his constitutional rights. The essential difference between a value-dilemma and a value-incident is that the individual(s) involved in the latter have already made a choice, while the individual(s) involved in the former, though faced with a choice, have not yet chosen.

Value-dilemmas are easy to construct. Here are two examples that I have prepared, the first a dramatized version of a dilemma suggested by material in one of the case studies in Part I; the second a brief account of an actual incident which occurred in a midwestern high school during the 1960s.

#1: A Feminist's Dilemma

Susan B. Anthony was troubled. Things had been going so well, she thought. Ever since her speeches at the Temperance Convention and the state teachers' meeting in 1852, more and more people were becoming acquainted with feminist efforts to secure a greater number of rights for women. The movement was growing steadily, with more supporters joining every day. Real progress was being made. It seemed like the petition campaign to secure for women the right to their own earnings and to vote was obtaining more signatures almost by the minute!

But now the war! The war had produced a dilemma for her, and for many of her friends. Should she continue active work for the movement, or put that aside for the time being and devote all of her energies to supporting the war effort? Many of her friends had chosen the latter course. Betsy Thompson, she knew, was now giving all of her time to working for the U.S. Sanitary Commission. She did believe in the Union cause—the nation must not be allowed to divide in two! On the other hand, they had come so far in the last few years. To stop now would be so difficult! Beth Stanton, in fact, was arguing that they must now accelerate their efforts and work even harder. What should she do?

#2: The Case of the Black Armbands

During the 1965 Christmas season, a group of students and adults in Des Moines, Iowa decided to wear black armbands as a sign of mourning for all those who had lost their lives in the Vietnam war. Rose Peterson, a student

at Roosevelt High School in Des Moines, decided to write an article for her school paper describing the plans to wear the armbands. Before the article could be published, however, it had to be approved by the school principal, since there was a school policy that any articles containing controversial material had to be censored.

After the Roosevelt High School principal read the article, he hastily called a meeting of all the other principals in the city. After the meeting ended, the principals announced that the article's publication would not be permitted. On the next morning, it was announced that the wearing of all armbands in secondary schools was to be banned, on the grounds that wearing the armbands was likely to be "disruptive" to normal school activity.

Mary Beth Tinker and her brother Chris, two students at Roosevelt, however, decided to wear the armbands to their classes. They were immediately suspended, and informed that they could not go to class until they agreed to return without wearing the armbands. What should Mary Beth and Chris do?

What should the individuals caught in these dilemmas do? What would you do if you were in their shoes? The situations in which the individuals in these two dilemmas find themselves are situations that all of us may find ourselves at one time or another. Perhaps not exactly like these, of course, but quite possibly something similar. How can a teacher proceed in order to help students determine for themselves what individuals caught in value-dilemmas should do? Here are some guidelines to consider:

- clarify what the value conflict is about; then
- ask for facts
- ask for alternatives
- ask for consequences of each alternative
- ask for evidence to support likelihood of each consequence occurring
- ask for an evaluation of desirability of likely consequences
- ask for a judgment as to which alternative seems best, and why.

Here is a set of questions organized along these lines:

1. What is this incident about? (What is the dilemma?)
2. What might (the central character) do to try and resolve the dilemma? (What alternatives exist?)
3. What might happen if he or she does each of these things? (What might be consequences of the various alternatives?)
4. What might happen to those who are not immediately involved? (What might be the short- as well as the long-range consequences?)

5. What evidence, if any, is there that these consequences would indeed occur?
6. Would each consequence be good or bad? Why?
7. What do you think X should do? (What do you think is the best thing for X to do?) Why? (See Figure 10, p. 204.)

Question 1 asks students to *sort out and identify what the value conflict or dilemma is about*—what is the disagreement? Is the conflict one of means—that is, a disagreement over how to attain an end or goal that all parties to the conflict regard as desirable and worth attaining? Or is it a conflict between different ends, with each of the parties to the conflict desiring that a different goal be attained? It is important for everyone involved in the conflict to be clear as to what the conflict is about. Unless there are some agreed-on goals, fruitful discussion will not occur.

Once the dilemma has been identified, the facts of the situation must be determined. This is another purpose of Question 1. Students are being asked to describe what has happened in the incident. As mentioned previously, this asking for facts is extremely important, for it provides students with a solid factual base from which to draw their later conclusions.

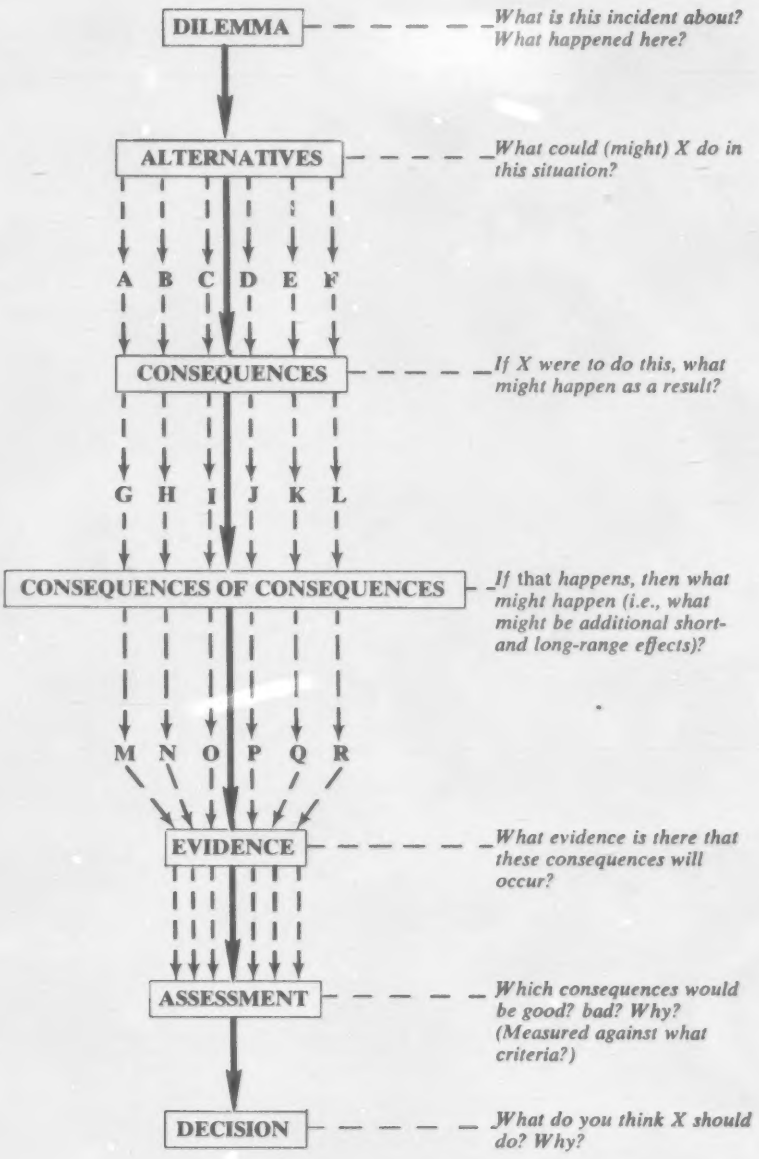
Question 2 asks students to *identify alternatives*. It is helpful here to form the class into small groups of five to six members each. Choose one person in each group to jot down members' ideas and another person to act as chairperson to keep the discussion focused on the task at hand. Brainstorm here. Encourage students to think of as many things as they can that the central character might possibly say or do in this situation. Each chairperson should encourage all members of her group to suggest ideas, with any and *all* ideas being welcomed, no matter how farfetched or unusual they may seem at the time.

The next step (Questions 3 and 4) is to have the class *predict consequences*. What might happen if the alternatives (recommendations that are suggested) were to become reality? Who would be affected and how? What about effects on future generations?

Take each alternative that has been suggested (or as many as the class members are able to handle without getting tired, bored, etc., depending on their age, ability, etc.), and have the class engage in brainstorming about the possible consequences of each alternative—that is, the possible things that might happen were the alternative to be pursued.

As in some of the other strategies described, it is helpful at this point to prepare a values-information chart on the chalkboard (or have stu-

Figure 10
ANALYZING VALUE CONFLICT


DILEMMA
What is this incident about? What happened here?
ALTERNATIVES
What could (might) X do in this situation?
A B C D E F
CONSEQUENCES
If X were to do this, what might happen as a result?
G H I J K L
CONSEQUENCES OF CONSEQUENCES
If that happens, then what might happen (i.e., what might be additional short- and long-range effects)?
M N O P Q R
EVIDENCE
What evidence is there that these consequences will occur?
ASSESSMENT
Which consequences would be good? bad? Why? (Measured against what criteria?)
DECISION
What do you think X should do? Why?

dents prepare such a chart individually in their notebooks). When dealing with value-dilemmas, however, the titles for the columns of the chart are different from what they are when dealing with value-incidents. Figure 11 illustrates one example of a chart that can be used for recording information about a value-dilemma.

Figure 11
A VALUES-INFORMATION CHART FOR RECORDING INFORMATION ABOUT A VALUE-DILEMMA

FACTS	ALTERNATIVES	CONSEQUENCES			
		Short-Range		*Long-Range*	
		Self	Others	Self	Others

When students can think of no further consequences, the search for evidence to support or refute the likelihood of the consequence occurring begins. Question 5 is intended to encourage students to search for data—reports, photographs, eyewitness accounts, newspaper articles, etc.—which describe what happened in similar situations. Once such evidence has been collected, its truthfulness and relevance should be assessed. Are the data that have been collected accurate? Do they refer to situations like the one under consideration?

When students can find no more evidence, they need to consider whether they would *want* each consequence to happen or not. They also should be encouraged to discuss why they think certain consequences are more desirable than others. It is necessary at this point, therefore, to make sure that students understand the concept of criteria. A *criterion* is the characteristic or set of characteristics which *makes* a consequence (or anything else) desirable or undesirable (or somewhere in-between) to someone. Criteria are essential for intelligent, reasoned ranking. Value-objects (ideas, policies, individuals, etc.) are often rated quite differently by people because they are using different sets of criteria. The development of criteria is an extremely important task, for it not only

gives students a yardstick or guideline against which to measure consequences in order to determine their desirability or undesirability, but also enables other students to understand the reasons for the rating.

The students must do the determining, however. It does not help a student to think about what criteria are important if the teacher simply tells her what criteria to use. But the teacher *can* and should expose students to a wide variety of criteria so that they do not look at consequences from only one point of view. Thus, various criteria should be identified and their meaning discussed with the class. Such criteria include:

- the *moral* criterion (to what extent would the lives and dignity of human beings be enhanced or diminished?);
- the *legal* criterion (would any laws be broken?);
- the *aesthetic* criterion (would the beauty of something be increased or reduced?);
- the *ecological* criterion (would the natural environment be harmed or helped?);
- the *economic* criterion (how much cost would be involved? Are sufficient funds available to pay these costs?);
- the *health and safety* criterion (would the lives of human beings be endangered in any way?).

These are a few of the possible criteria which students can use. They should be encouraged to suggest additional criteria which they believe should be considered. It is important to realize, however, that any sort of reasoned, intelligent rating of consequences (or anything else) in terms of desirability/undesirability is impossible unless *some* criteria are used. To help students analyze consequences from several different points of view, a value-analysis chart can be used (see Figure 12, p. 208).

When the class has finished discussing the desirability of each consequence, and the students have stated their reasons and listened to the reasons of others for considering certain consequences as either desirable or undesirable, the alternatives can be ranked from most desirable to least desirable, using the last column on the right in the value-analysis chart. The entire class can now reassemble so that all the students can discuss why they ranked the alternatives as they did. Which alternative seems to be most preferred? Why? Would particular reasons for thinking a particular alternative is most desirable in this case hold true in other situations as well? Why or why not?

Underlying this strategy is the assumption that through realizing, discussing, and evaluating various courses of action—along with the con-

Figure 12
A VALUE-ANALYSIS CHART

Alternatives	Consequences	DESIRABILITY FROM VARIOUS POINTS OF VIEW							Ranking
		Moral	Legal	Aesthetic	Eco-logical	Economic	Health & Safety	Etc.	

sequences of these alternatives and the evidence to support or refute the likelihood of these consequences occurring—students will see that people hold values that conflict at times, realize that there are many different sets of criteria that can be used to evaluate a consequence, and, hopefully, become more willing to evaluate rationally the consequences of different courses of action.

Values Education and the Future

The ideas and strategies that have been presented here are only one approach to values education. Several other approaches exist. All need to be considered by anyone interested in implementing a program of values education in the schools. But none of these approaches is the last word on the subject. We need to have lots of models and strategies proposed, and then lots of research which tests and compares the effectiveness of these models and strategies in educating students in values.

What is lacking at present, however, is any clarity, let alone consensus, as to what the term "values education" means. What does it mean to say that someone has been "educated in values"? What sorts of skills, attitudes, knowledge, etc. does such a person possess? How is this person different from one who has not been so educated? How do we determine growth and development in values education? What specific kinds of strategies and activities promote such growth? What subject matter is important to study? How should such subject matter be sequenced

throughout the grades? When and where should the strategies and activities be used?

These are difficult questions, but they are rarely discussed in social studies journals or at social studies conferences and conventions. A conscientious effort to do so, however, seems warranted. Indeed, it seems essential if any sort of responsible, comprehensive program of values education is to occur in social studies classrooms.

A SELECTED BIBLIOGRAPHY OF WORKS DEALING WITH OR RELATED TO VALUES EDUCATION

Note: No claim is made that the bibliography which follows includes all important works on values education. The field has not yet jelled sufficiently for one to be sure even as to what such works are. What I have done is to suggest a number of different kinds of works, from the very simple to the quite complex. In the main, I have refrained from listing methods textbooks or journal articles unless they contained material which could not be found elsewhere. I also have refrained from listing student materials or curriculum guides.

Works Dealing with Ethics

Baier, Kurt, *The Moral Point of View: A Rational Basis of Ethics* (New York: Random House, 1965).

DeGeorge, Richard T., ed., *Ethics and Society: Original Essays on Contemporary Moral Problems* (New York: Anchor, 1966).

Edel, Abraham, *Ethical Judgment: The Use of Science in Ethics* (New York: Free Press, 1955).

Fletcher, Joseph, *Situation Ethics: The New Morality* (Philadelphia: Westminister, 1966).

Frankena, William K., *Ethics* (Englewood Cliffs, New Jersey: Prentice-Hall, 1963).

Hare, R. M., *Freedom and Reason* (New York: Galaxy, 1965).

Peters, Richard S., *Ethics and Education* (Chicago: Scott, Foresman, 1966).

Scriven, Michael, *Primary Philosophy* (New York: McGraw-Hill, 1966).

Works on Logic and Critical Thinking

Ennis, Robert H., *Logic in Teaching* (Englewood Cliffs, N.J.: Prentice-Hall, 1969).

Hullfish, H. Gordon and Philip G. Smith, *Reflective Thinking: The Method of Education* (New York: Dodd, Mead, 1964).

Wilson, John, *Language and the Pursuit of Truth* (Cambridge: Cambridge University Press, 1967).

General Philosophical Works on Education

Dewey, John, *Democracy and Education: An Introduction to the Philosophy of Education* (New York: Macmillan, 1916).

Yearbooks of Professional Organizations

Henderson, George, ed., *Education for Peace: Focus on Mankind* (Washington, D.C.: Association for Supervision and Curriculum Development, 1973).

Metcalf, Lawrence E., ed., *Values Education: Rationale, Strategies, and Procedures* (Washington, D.C.: National Council for the Social Studies, 1971).

Scobey, Mary-Margaret and Grace Graham, eds., *To Nurture Humaneness: Commitment for the '70s* (Washington, D.C.: ASCD, 1970).

Psychological Theory

Bronfenbrenner, Urie, *Two Worlds of Childhood* (New York: Russell Sage Foundation, 1970).

Kohlberg, Lawrence, "The Child as a Moral Philosopher," *Psychology Today*, September, 1968, pp. 25-30.

_____, "Education for Justice: A Modern Statement of the Platonic View," in N.F. and T.R. Sizer, eds., *Moral Education*, (Cambridge, Mass.: Harvard University Press, 1970).

_____, "From Is to Ought: How to Commit the Naturalistic Fallacy and Get Away with It in the Study of Moral Development," in T. Mischel, ed., *Cognitive Development and Epistemology*, (New York: Academic Press, 1971).

_____, "The Cognitive-Developmental Approach to Moral Education," *Phi Delta Kappan*, June, 1975, pp. 670-677.

Mischel, W., "A Cognitive Social Learning Approach to Morality and Self-Regulation," in Thomas Likona, ed., *Morality: Theory, Research, and Social Issues* (New York: Holt, Rinehart and Winston, 1976).

Piaget, Jean, *The Moral Judgment of the Child* (London: Routledge and Kegan Paul, 1932).

Wadsworth, Barry J., *Piaget's Theory of Cognitive Development* (New York: David McKay, 1971).

Collections of Essays

Barr, Robert D., ed., *Values and Youth* (Washington, D.C.: National Council for the Social Studies, 1971).

Kirschenbaum, Howard and Sidney B. Simon, eds., *Readings in Values Clarification* (Minneapolis: Winston Press, 1973).

Meyer, John, et al., eds., *Values Education: Theory/Practice/Problems/Prospects* (Waterloo, Ontario, Canada: Wilfrid Laurie Press, 1975).

Methodology

Beck, Clive, *Moral Education in the Schools* (Toronto, Ontario, Canada: Ontario Institute for Studies in Education, 1971).

Casteel, J. Doyle and Robert J. Stahl, *Value Clarification in the Classroom: A Primer* (Pacific Palisades, Calif.: Goodyear, 1975).

Fotion, N., *Moral Situations* (Kent, Ohio: Kent State University Press, 1968).

Fraenkel, Jack R., *Helping Students Think and Value: Strategies for Teaching the Social Studies* (Englewood Cliffs, N.J.: Prentice-Hall, 1973).

Hall, Robert T. and John U. Davis, *Moral Education in Theory and Practice* (Buffalo: Prometheus, 1975).

Hunt, Maurice P. and Lawrence E. Metcalf, *Teaching High School Social Studies* (New York: Harper and Row, 1968).

Nelson, Jack L., *Introduction to Value Inquiry* (Rochelle Park, New Jersey: Hayden, 1974).

Newmann, Fred M. with Donald W. Oliver, *Clarifying Public Controversy* (Boston: Little, Brown, 1970).

Oliver, Donald W. and James P. Shaver, *Teaching Public Issues in the High School* (Boston: Houghton Mifflin, 1966).

Raths, Louis E., et al., *Values and Teaching* (Columbus, Ohio: Charles E. Merrill, 1966).

Scriven, Michael, *Value Claims in the Social Sciences* (Boulder, Colorado: Social Science Education Consortium, 1966).

———, *Student Values as Educational Objectives* (Boulder, Colorado: Social Science Education Consortium, 1966).

Shaftel, Fannie R., and George, *Role-Playing for Social Values: Decision-Making in the Social Studies* (Englewood Cliffs, N.J.: Prentice-Hall, 1967).

Simon, Frank, *A Reconstructive Approach to Problem-Solving in the Social Studies* (Alberta, Canada: University of Calgary Press, 1970).

General and Related Works

Canning, Jeremiah W., ed., *Values in an Age of Confrontation* (Columbus, Ohio: Charles Merrill, 1970).

Crittenden, Brian, *Form and Content in Moral Education* (Toronto, Ontario, Canada: Ontario Institute for Studies in Education, 1972).

DeCecco, John P. and Arlene K. Richards, *Growing Pains: Uses of School Conflict* (New York: Aberdeen Press, 1974).

Glasser, William, *Schools Without Failure* (New York: Harper and Row, 1969).

Greenberg, Herbert M., *Teaching with Feeling* (New York: Macmillan, 1969).

Inlow, Gail M., *Values in Transition: A Handbook* (New York: John Wiley, 1972).

Jones, Richard M., *Fantasy and Feeling in Education* (New York: New York University Press, 1968).

Krathwohl, David R., et al., *Taxonomy of Educational Objectives: Affective Domain* (New York: David McKay, 1964).

Mager, Robert F., *Developing Attitude for Learning* (Palo Alto, Calif.: Fearon, 1968).

Means, Richard L., *The Ethical Imperative: The Crisis in American Values* (Garden City, New York: Doubleday, 1969).

Rich, John Martin, *Education and Human Values* (Reading, Mass.: Addison-Wesley, 1968).

Rokeach, Milton, *Beliefs, Attitudes, and Values* (San Francisco: Jossey-Bass, 1970).

———, *The Nature of Human Values* (New York: Free Press, 1973).

Rucker, W. Ray, et al., *Human Values in Education* (Dubuque, Iowa: Kendall/Hunt, 1969).

Ruggiero, Vincent Ryan, *The Moral Imperative* (Port Washington, New York: Alfred Publishing Co., 1973).

Shaver, James P., *Facing Value Decisions: Rationale Building for Teachers* (Belmont, Calif.: Wadsworth, 1976).

Superka, Douglas, et al., *Values Education: Approaches and Materials* (Boulder, Colorado: Social Science Education Consortium, 1975).

Weinstein, Gerald and Mario D. Fantini, eds., *Toward Humanistic Education: A Curriculum of Affect* (New York: Praeger, 1970).

FOOTNOTES

[1] John Childs, *Education and Morals* (New York: Appleton-Century-Crofts, 1950), pp. 17-19.

[2] Charles B. Silberman, *Crisis in the Classroom* (New York: Random House, 1970).

[3] "He 'Helped' Wife To Die," San Francisco *Sunday Examiner and Chronicle*, November 17, 1974. Reprinted by permission of the publisher.

[4] Paul C. Bartholomew, *Summaries of Leading Cases on the Constitution* (Totowa, N.J.: Littlefield, Adams & Co., 1968), pp. 162-163. Reprinted by permission of the publisher.

[5] From pp. 84-86 "Letter from Birmingham Jail—April 16, 1963" in *Why We Can't Wait* by Martin Luther King, Jr. By permission of Harper & Row, Publishers.

[6] Jack R. Fraenkel, *Helping Students Think and Value: Strategies for Teaching the Social Studies* (Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1973), pp. 249-250.

[7] Fannie R. Shaftel and George Shaftel, *Role-Playing for Social Values: Decision-Making in the Social Studies* (Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1967), p. 78.

[8] Robert G. Hanvey, *An Attainable Global Perspective* (New York: Center for War/Peace Studies, 1975), p. 11.

[9] Michael Scriven, *Value-Claims in the Social Sciences,* (Boulder, Colorado: Social Science Education Consortium, 1966).

[10] *Ibid.*

[11] See, for example, Michael Scriven, *Student Values as Educational Objectives* (Boulder, Colorado: Social Science Education Consortium, 1966); Donald W. Oliver and James P. Shaver, *Teaching Public Issues in the High School* (Boston: Houghton Mifflin, 1966); Lawrence Kohlberg, "Moral Education in the Schools: A Developmental View," *School Review,* Spring, 1966, pp. 1-30.

[12] Michael Scriven, *Primary Philosophy,* (New York: McGraw-Hill, 1966), p. 24.

[13] Fred M. Newmann with Donald W. Oliver, *Clarifying Public Controversy* (Boston: Little, Brown, 1970), pp. 53-54.

[14] For a more extensive treatment of sources of evidence, see Oliver and Shaver, *op. cit.,* pp. 105-112.

[15] Robert H. Ennis, *Logic in Teaching* (Englewood Cliffs, N.J.: Prentice-Hall, 1969), p. 393.

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United States Department of the Interior, National Park Service: ii (photo by Richard Frear), viii, 4.

American History Illustrated: x.

Collection of the Library of Congress: 6, 20 (metal cut after J. S. Jarvis in *New York Post*), 27, 28, 55, 88, 91, 98 (wood engraving in *Harper's Weekly*, September 18, 1858), 110 (*Puck*, February 9, 1881), 124, 125, 127, 133, 134.

S. F. Holbrook, *Threescore Years: An Autobiography* (1857), 16.

Smithsonian Institution: 36 (65638), 42 (48204), 47 (75-15622), 51 (74-7527), 65 (72-5078), 66 (73-8067).

National Archives: 74 (U.S. War Department photo 165-XS-7), 97 (U.S. Bureau of Public Roads photo 30-N-32-455).

The Church of Jesus Christ of Latter-day Saints Historical Department Archives: 92

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Environmental Protection Agency: 147.

U.S. Agency for International Development: 148 (photo by Carl Purcell).

National Education Association: 152 (photo by Joe Di Dio), 157 (photo by Joe Di Dio).

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